UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS

IN RE:	.	Case No. 21-30085-HDH-11
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NATIONAL RIFLE	.	
ASSOCIATION OF AMERICA	.	Earle Cabell Federal Building
and SEA GIRT LLC,	.	1100 Commerce Street
	.	Dallas, TX 75242-1496
	.	
Debtors.	.	
	.	May 3, 2021
	.	1:03 p.m.
. . . . .	.	P.M. Session

TRANSCRIPT OF TRIAL
BEFORE HONORABLE HARLIN DeWAYNE HALE
UNITED STATES BANKRUPTCY COURT CHIEF JUDGE

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I N D E X

THE COURT: You may proceed.

MR. STRUBECK: Thank you, Your Honor.

And, again, for the record, Louis Strubeck of Norton Rose Fulbright on behalf of the Official Committee of Unsecured Creditors.

I wanted to start, Your Honor, by thanking you and your staff. This trial is one of great magnitude, and imposes huge impositions on a Court and its staff, and we're mindful of that, as I believe all the other lawyers today are, Judge, and so I just wanted to extend the thanks to you and your staff for sticking with us for these many days of trial, and didn't want it to be lost on you that we all appreciate the sacrifices and efforts that you made in connection with this.

As I said in my opening statement, Your Honor, the stakes here are extremely high, high stakes poker. And Your Honor has mentioned the fact that this may be one of the more important motions, if not the most important motion, you've ever had to decide.

And when I was preparing for this closing argument, I actually thought about your predecessor on the bench, and I smiled because I think he would have really enjoyed this, and so I hope you are, too, to some extent.

I also said in my opening statement, Your Honor, that the Committee sees things here through a different lens than the moving parties. The lens is not colored by political

agendas, or litigation, or fervent longtime members' passions. And I think those dynamics were on display well before the start of trial, and they've continued to play out during the trial, and even in the closing arguments you've heard earlier today.

Specifically, Your Honor, in what Mr. Pronske and Mr. Mason had to say, the Committee's positions here are without exception, reflective of and consistent with its statutory duties under the Code.

As a result, the closing you're going to hear from me, Your Honor, is going to be a little bit more measured, and there will be considerably much less hyperbole than some of the other closing statements I think you heard earlier in the day.

Consistent with the Committee's duties, Your Honor, we oppose the dismissal of these bankruptcy cases and the appointment of a trustee, especially to the extent that the appointment of a trustee would result in the complete displacement of the NRA's management and their ability to propose a restructuring plan, and make mission-specific decisions.

These are, as has been reportedly [sic] pointed out to Your Honor, and well-known to the Court, extraordinary remedies that are being sought, and they should be granted only in the most unusual cases.

Here, these remedies are just not in the best

interest of creditors and the estates, and I want to emphasize the best interest of creditors and the estates because I'm going to come back and talk about that in just a second when I address the question that everybody has answered that Your Honor posed last Thursday.

I think the evidence has demonstrated, Your Honor, that dismissal or displacement of management here would do severe, if not irreparable, harm to the estates, creditors, and other parties in interest.

And to steal a line from Mr. Mason earlier, you know, the ripple effect here in terms of what would happen if these cases were dismissed, or if a Chapter 11 trustee were appointed, it's actually more of a tsunami, Judge, in terms of what the effect would be on the NRA going forward.

Similarly, Your Honor, the UCC opposes the appointment of an examiner. The examiner motion essentially raises the same allegations that form the basis of the dismissal and trustee motions. Section 1103 statutorily empowers the Unsecured Creditors' Committee to investigate the debtors' transactions, governance issues, and affairs, and that investigation has already begun in earnest.

An examiner would serve only to add an additional layer of expense and delay to these cases, and duplicate, to a large extent, the efforts of the UCC.

The more appropriate solution here, Judge, is the

appointment of a CRO. And I think that's something that Judge Journey's counsel has indicated was acceptable to Judge Journey, the caveat being with the correct scope.

I'm going to spend a good bit of time talking about the CRO issues here, to a large degree, Your Honor, because I believe that the Unsecured Creditors' Committee was the champion of those from the get-go.

Mr. Pronske suggested in his opening that the NRA's request for approval of the retention of Mr. Robichaux was designed more as a defensive mechanism to bolster its arguments against dismissal or the appointment of a trustee. But that really isn't the case here, Judge, because since shortly following its appointment, the Committee has strongly encouraged the debtors to retain a chief restructuring officer in these Chapter 11 cases because it is the most practical, efficient, effective, and least disruptive solution to the issues that have been raised by the moving parties.

As the Committee previously has opined, the retention of the right chief restructuring officer with the right and proper authority and scope of responsibility would bring stability, transparency, and much needed credibility to the process while instilling confidence and assurance that these Chapter 11 cases are being independently run for the benefit of unsecured creditors without undue influence from any internal agendas.

While the initial scope proposed by the debtors regarding the chief restructuring officer was not in the Committee's reasoned viewed sufficiently broad enough, the Committee and the debtors have now agreed upon a revised scope, the terms of which are embodied in a revised engagement agreement that was filed on April the 28th.

With this expanded scope, which includes significantly a mechanism for Mr. Robichaux to bring issues to the attention of the Court, the Unsecured Creditors' Committee believes that the appointment of a CRO is the most appropriate and, again, least disruptive remedy here, given the unique nature of the NRA's business, to address the issues that have been raised in the motion to dismiss, appoint a Chapter 11 trustee, and the motion to appoint an examiner.

I would start, Your Honor, by addressing the dismissal motion, and I have a feeling that the NRA's counsel is going to spend a lot more time in terms of the granular side of all this, and referring to specific testimony and the like.

But the outcome here from the Committee's perspective is straightforward, and it comes down to the simple reality that the NRA's continued existence likely depends on these cases being allowed to proceed.

In his closing remarks, Mr. Mason said that the NRA would be just fine if these cases were dismissed. I honestly don't know where that statement comes from because there is no

support for the record.

At the outset, it's important to emphasize that the UCC's position is not in any way based on the UCC not giving credence to, or not fully appreciating, the seriousness of the allegations of mismanagement and misconduct identified by the New York Attorney General and Ackerman. I'm not going to begin to trivialize those allegations, Your Honor.

To the contrary, the UCC believes that additional management and government changes must be made to the NRA. And I'm going to make those even clearer, Your Honor, when I start talking at the very end about the CRO application, and the scope of Mr. Robichaux's authority, and the expectations of the Unsecured Creditors' Committee in terms of what we expect to ultimately happen under a plan.

In fact, the UCC believes that the ultimate results of these Chapter 11 cases should be twofold:

First, there should be a plan that provides for payment in full of creditors, and that's in keeping with the Committee's statutory duties;

And, second, there should be a plan, as I said, that proposes major management and government changes to the NRA that includes, among other things, safeguards to protect against future misconduct and additional procedures to further increase transparency and public confidence in how the finances of the NRA are managed.

Where the UCC diverges from the New York Attorney General, Ackerman and, to my surprise, the U.S. Trustee, is how to accomplish these objectives. The UCC believes this can best be accomplished, in fact it can only be accomplished, through these Chapter 11 cases remaining before this Court, and allowing the bankruptcy plan process to play out.

Conversely, dismissal of these cases would deprive the NRA of the platform needed to implement the wholesale changes that everyone agrees are needed here.

First, and most fundamentally, Your Honor, if the Court dismisses these cases, there is an untenable risk that the NRA may be deprived of the opportunity to restructure and implement any governance changes. Can there really be any question that the New York Attorney General is seeking dissolution of the NRA through its regulatory action? I submit not.

As addressed in our papers, filing bankruptcy to avoid liquidation or dissolution is the quintessential time-tested reason for a debtor to file for bankruptcy. Once you accept the dissolution of the NRA is the ultimate end game of the New York Attorney General, then rejecting dismissal becomes an easy call, and everything else is superfluous.

For example, the central argument advanced by the New York Attorney General and Ackerman is that these cases were filed in bad faith because they're a litigation ploy, and the

parties make much ado about statements made by the NRA to its constituency about trying to avoid New York and its regulatory and political scrutiny.

While the debtors have challenged those allegations, there's been a lot of back and forth about the stated reason for the filing, the Court need not devote much time or attention to this issue because the NRA's subjective intent for filing is not dispositive.

In fact, the dispute regarding the NRA's reason for filing is a sideshow that ignores the inescapable conclusion that this bankruptcy may be the only way for the NRA to continue as a going concern with new and improved management and government in place. So there's clearly a legitimate purpose for the filing.

Mr. Pronske referred to the NRA's, quote, "dissolution defense" in his closing statement argument. I would submit that avoiding dissolution isn't a defense here to dismissal, but a justifiable reason for the filing in the first instance.

We cite to multiple cases in our papers, Your Honor, to support the very obvious proposition that allowing the company to continue as a going concern is a basic and sound fundamental objective of Chapter 11.

So there's no need to dwell on this issue because it's very clear that these bankruptcy cases serve a legitimate

purpose. And overt threat of dissolution of the NRA also distinguishes the facts here from those in the SGL Carbon case, that both movants surprisingly tout as being persuasive and analogous; it's not.

Simply put, SGL involved a civil class action antitrust lawsuit seeking monetary damages, not a regularly lawsuit brought by a state government agency seeking dissolution. And a key aspect of the Court's decision in SGL to dismiss the case was its finding that an adverse judgment against the debtors would not put them out of business. Here, the very essence of the AG actions is to put the NRA out of business. So the circumstances here could not be more different.

And speaking of dissolution, Your Honor, that's the perfect segue into the Committee's response to the question that you raised at the close of evidence. And you've heard from the prior attorneys earlier in the day, their take on that, and let me give you the Committee's take, Judge. Our interpretation of the Court's question was this: Has cause for dismissal been established under Section 1112 because it is bad faith to file a bankruptcy case to defend against the lawsuit seeking dissolution where a dissolution can only be ordered after a judicial determination that dissolution is in the best interest of the public. The short and correct answer to this question, we believe, is no.

The facts and circumstances of this case support the notion that these Chapter 11 cases were filed for a legitimate purpose, which was to prevent any dissolution that could occur as a result of the New York Attorney General lawsuit, but also to propose a Chapter 11 plan that would allow it to reorganize, address corporate government concerns, and reincorporate in Texas, and pay all creditors in full.

We know that the short answer usually is not enough here, so let's take a closer look at the actual New York statute. Mr. Pronske spoke a little bit about the statute in his closing argument, and I want to elaborate a little bit on some of the points of the statute that I don't think he emphasized.

New York public law 1109 provides that dissolution, which is in the court's discretion, does not require that dissolution be in the best interest of the public. Let me repeat that: It does not require that dissolution be in the best interest of the public.

Instead, the statute merely provides that in making the decision, the interest of the public is of paramount importance, and shall be taken into consideration by the court.

Furthermore, it is not clear what interest of the public is to be considered. Is it the interest of the public in the State of New York? Or will the Court consider the interest of the broader public of the entire United States,

which would necessarily include all creditors, including the UCC members, which could include an official member committee formed, and other parties in interest with a vested interest in the survival of the NRA.

While I'm sure if we ask Mr. Pronske and the New York Attorney General, they would tell us that the views of constituents from across the country will be considered, that provides little comfort for the Unsecured Creditors' Committee here, and should likewise provide little comfort to the Court.

But there is one venue that we know will take into consideration all views, and that is this Court. In addition to the Unsecured Creditors' Committee and Judge Journey, we've had numerous other State Attorney Generals, including the State of Texas, weigh in and oppose dismissal through the filing of amicus curiae briefs.

The bankruptcy process, which is a collective process that permits all parties in interest to participate, is uniquely situated to address the NRA and issues raised by the New York Attorney General and others.

That being said, we do not believe the Court even has to reach a decision as to what standard the New York courts are governed by in ruling of dissolution.

Indeed, whether the interest of the public must be considered by the New York courts is irrelevant because at the end of the day, Section 1112 of the Bankruptcy Code requires

this Court to determine whether dismissal of the bankruptcy case or appointment of a trustee or examiner is in the best interest of the estate and its creditors.

Here, the evidence at trial was uncontroverted that dismissal of these cases would not be in the best interest of creditors and the estates, and that is the standard.

So we would urge this Court to not consider dismissal to be acceptable because at the end of the day, the New York Court cannot dissolve the NRA unless it is in the best interest of the public.

The test is whether dismissal is in the best interest of creditors and the estate under the Bankruptcy Code. And the inescapable conclusion here, based upon the evidence, is that it is not.

A fundamental purpose of the Bankruptcy Code is to provide troubled, but viable, companies with a fresh start. What better way to describe the NRA?

This notion of providing companies a fresh start covers companies that not only may have financial problems, but also operational problems. And let's be clear, the New York Attorney General Action is solely about conduct that occurred at the NRA prior to the filing of the lawsuit in 2020. So any ruling that dissolution is in the best interest of the public would be based solely on whether the prior conduct of officers at the NRA or the prior construct of the NRA warrants

dissolution of the organization. In one regard, it is backward-looking, not forward-looking, and the New York not-for-profit statute confirms this fact. The scope and purpose of that action is simply not designed to address what, if any, steps or changes may be necessary to allow the NRA a fresh start that would be in the best interest of its stakeholder, including its millions of members all over the United States and beyond.

In contrast, this issue is precisely within this Court's scope, and is the key issue that the bankruptcy laws are specifically designed to address.

I want to now turn to just a couple of more technical legal arguments related to dismissal, and I'll be brief because I expect Mr. Garman is going to address these in great detail.

First, any suggestion that the debtors' current financial position precludes it from filing bankruptcy or is conclusive evidence of bad faith is legally unsupportable. As the Court knows, the debtor eligibility requirements set out in Section 109 do not include a requirement that the debtor be insolvent.

Moreover, the examples of cause under Section 1112 do not include solvency of the debtor. Even though the list in Section 1112 is not exhaustive, solvency is such a common bankruptcy concept that Congress certainly would have included it in Section 1112 if solvency was a valid basis to dismiss a

Chapter 11 case.

Next, I want to address an argument raised by Ackerman, but not advanced by the New York Attorney General. Ackerman alleges that dismissal is appropriate because the New York -- because the Court cannot grant relief to the NRA because the NRA, as a New York not-for-profit, is subject to New York State not-for-profit law, which requires that a dissolution or merger be approved by the New York Attorney General or the New York Supreme Court. That simply cannot be true since it would essentially preclude New York not-for-profit companies from availing themselves to bankruptcy protection.

For starters, we do not agree that the Bankruptcy Court requires the application of certain aspects of not-for-profit law, specifically Section 363(d)(1) and 1129(d)(1).

I want to turn now, Your Honor, to the issue of the Chapter 11 trustee. As the Court knows, the Committee opposes the appointment of a Chapter 11 trustee. And so here, I need to take exception to one of the statements of Mr. Herring who represents Mr. Dell'Aquila. Prior to retaining counsel, Mr. Dell'Aquila spoke at a prior hearing or hearings before the Court. Mr. Dell'Aquila is a prospective class action plaintiff, and as Mr. Herring pointed out, he’s also a member of the Unsecured Creditors’ Committee.

Mr. Herring said that Mr. Dell'Aquila, who does not

support the Committee's view regarding the retention of a CRO, supported the alternative relief requested by the Unsecured Creditors' Committee regarding a trustee with limited power.

I want to point out, Your Honor, that the Committee did not request in the alternative the appointment of a trustee with limited power. We said only, Your Honor, that to the extent you had decided to appoint a Chapter 11 trustee, that we believed that Chapter 11 trustee should have limited authority here.

The UCC, again, takes seriously the allegations of misconduct and mismanagement. But more importantly, values how important it is that members and creditors of the NRA trust management, and particularly trust that the fiduciaries of the NRA are going to carry out and fulfill these duties appropriately.

Again, certain management and government changes need to be made as part of any reorganization or restructuring of the NRA, and the Committee has always said that.

However, the complete displacement of current management and their professionals is not the way to achieve this objective. Rather, the objective is best achieved through a Chapter 11 plan and a coordinated effort between the debtors and its major stakeholders, including the Unsecured Creditors' Committee, to discuss and negotiate government changes that need to be made.

As indicated by the CRO application, which I'll speak to in a moment, so far the debtors have been receptive to input and suggestions by the UCC, and we expect that will be the case moving forward.

Again, I don't want to spend too much time discussing the standard for appointing a Chapter 11 trustee, because we all know that. But I want to highlight two things:

First, appointing a trustee and displacing management is universally viewed as an extraordinary remedy especially early in a case, like here, where a debtor is deprived of the opportunity to move forward with the Chapter 11 plan. In this regard, the cases are clear that only egregious conduct that is established by clear and convincing evidence warrants the appointment of a trustee.

Second, the decision to appoint a trustee under Section 1104 of the Code involves considerable judicial discretion and balancing of relevant interests and cost-benefit analysis.

Here, a clear and convincing case has not been made for the appointment of a trustee. The Unsecured Creditors' Committee has carefully considered the cost and benefits of having a trustee appointed, and concluded the appointment of a trustee is not in the estate and creditors' best interest.

Given the NRA's unique nature, a not-for-profit that has an especially specific mission and that, quite frankly, is

a politically polarizing organization, it's neither practical nor realistic for a Chapter 11 trustee to oversee and micromanage the NRA's operations, and to run the entire reorganization process at the NRA.

As the testimony has established, there are numerous operational nuances and specialties to consider, such as fundraising, educational programs, interfacing with members and the like, things that a Chapter 11 trustee simply is not equipped to, and frankly was never expected to, handle the sort of practical if not insurmountable impediments here. But even a trustee could come in and take over, the learning curve would be extremely steep and it would unquestionably take a considerable amount of time and the expenditures of a lot of money for the trustee to get fully up to speed. This could jeopardize the first objective of these Chapter 11 cases to ensure that the creditors get paid in full, and the primary statutory charge of this Committee.

I have always assumed, Judge, that the current management filed these Chapter 11 cases with a specific exit plan in mind. I've known Mr. Neligan for years, and it would be hard for me to imagine that that would not have been something that would have been a paramount focus for him.

Until today, we only knew part of that plan. It entailed reorganization as a Texas entity, but beyond that, we didn't really have any details. Now we do, as the NRA has

filed a plan, a plan that provides for payment in full of allowed unsecured claims.

If the CRO is retained, we expect the CRO will play a major role in negotiating plan changes with the Committee and other parties.

If a trustee is appointed, and management is displaced, on the other hand, there is no telling which direction these cases will go.

Moreover, the UCC shares the debtors' concern regarding the impact on fundraising. Donations are a critical component of funding for the NRA, and the undisputed testimony at trial is that any action that would chill relations with the NRA's membership and fundraising efforts would have potentially devastating consequences to the organization.

So there are clear and real consequences to displacing management. There would undoubtably be delay, there are also restructuring execution risks, and these risks and costs far outweigh any benefit.

The risk of mismanagement and misconduct during these Chapter 11 cases is extremely low, Your Honor. Between this Court's oversight, the watchdog role that the Unsecured Creditors' Committee and U.S. Trustee play, as well as the many individual creditors who are watching these cases closely, the debtors are under intense scrutiny. They have already made numerous disclosures, and provided significant amounts of

information during these cases. And as the Court is fully aware, the debtors have ongoing reporting requirements.

Moreover, Ms. Rowling, as the Court will recall, a former whistle-blower, and now the Acting Chief Financial Officer of the NRA, detailed in her testimony the extensive internal measures taken by the NRA to protect against future abuse of spending and other financial waste. This included stringent enforcement of the human resources policy where she testified there have been no reimbursement or payments for living expenses in 2020, and implementation of an expanded travel reimbursement policy that covers much more than first class travel.

Thus, while there have been mismanagement abuses in the past, the evidence has demonstrated the vast majority of those occurred at least three years ago, prior to the New York Attorney General filing her lawsuit in 2020, and that remedial steps have been instituted by the NRA to curb further mishaps.

So while ultimately restructuring should include additional management and governance changes, we do not believe there is a material risk of mismanagement/misconduct during the pendency of these cases.

Nevertheless, we believe the addition of an independent fiduciary would provide substantial value, and with this in mind, the Unsecured Creditors' Committee proactively has tried to be constructive in suggesting certain compromised

positions, or at least solutions that would address the concerns raised by the movants without completely undermining the debtors' ability to restructure. And the best way to achieve that balance, Your Honor, is the retention of a chief restructuring officer.

So in this regard, the Creditors' Committee has made two suggestions:

First, from the get-go, we have strongly urged the debtors to retain a chief restructuring officer. The Creditors' Committee believes that the right chief restructuring officer with the right scope and authority would go far to address many of the issues and concerns raised by the movants.

The U.S. Trustee responded to the UCC's suggestion and submitted a brief arguing that a CRO cannot usurp the powers of a trustee.

However, this is not what the UCC is advocating. The appointment of a chief restructuring officer is a factor that the Court can consider in determining whether a trustee would benefit the estate. And here, the Creditors' Committee believes the retention of a CRO would obviate the need for a trustee because effectively, it would address any risk of further mismanagement.

And, again, while there are already safeguards in place that make it highly unlikely that there would be

misconduct during these bankruptcy cases, the appointment of a CRO will serve to further minimize that risk.

Second, the Creditors' Committee has advocated if, and only if, the Court were inclined to appoint a trustee, the trustee's powers should be limited. Specifically a trustee should not displace, but rather should work with current management of the NRA in overseeing operations and seeing the debtors through the Chapter 11 process.

The U.S. Trustee has argued that the Court does not have authority to appoint a trustee with limited powers, and essentially the appointment of a trustee is a whole or nothing proposition; we respectfully disagree and refer the Court to the cases cited in our filings.

As we cite several cases where a Chapter 11 trustee was appointed and served a limited role, Your Honor, those cases, we think, would be enforceable here, and Your Honor would have the discretion, if you decided to appoint a Chapter 11 trustee, to limit his or her authority.

I want to turn briefly, Your Honor, to the examiner motion. Consistent with the Unsecured Creditors' position on the other pending motions before the Court, we do not believe an examiner is warranted nor appointed in these cases. It's important to note that like the Committee, the movant here, Mr. Journey, opposes the dismissal of the cases and appointment of a trustee.

Where the Committee and Mr. Journey differ is the remedy sought. And, Your Honor, I believe I heard Mr. Journey's counsel say in his closing arguments that Mr. Journey is receptive to either the appointment of an examiner or a chief restructuring officer, but with respect to the latter, he wants to make sure that the scope is appropriate. We believe the scope is appropriate now, as it has been expanded.

And just very briefly, Your Honor, Mr. Journey contends in support of his request to appoint an examiner, that there's no dispute, the appointment of an examiner is mandatory in these cases under Section 1104. We agree with Ms. Lambert, that the movant has not satisfied its burden of showing that the debtors' fixed liquidated unsecured debts, other than goods -- for goods, services, taxes owing to an insider exceed $5 million as required by the language of the statute. Indeed because the movant has provided no competent evidence in support of this requirement, and for this reason alone, the motion should be denied.

Even if the statutory threshold of Section 1104(c)(2) is satisfied here, which it is not, numerous courts agree that the as is appropriate language of the statute grants a court ample discretion to not appoint an examiner.

These courts agree that the appointment of an examiner is precluded where doing so would not be appropriate based upon the facts and circumstances of the case. And we

submit that is exactly the situation here, Your Honor.

If you listen to Mr. Journey's attorney's recitation of the different authority that he would like for an examiner or a chief restructuring officer to have, you'll notice that that scope of authority mirrors the scope of authority that's been provided as expanded for the chief restructuring officer which the NRA seeks to appoint.

And in addition, Your Honor, a lot of the other elements of what Mr. Journey's counsel said that he would expect to see an examiner be able to do are things that are both statutorily provided to the Committee under the Bankruptcy Code, and actions the Committee has already undertaken.

So, Your Honor, in our judgment, the appointment of an examiner is not justified here, and the appointment of a chief restructuring officer, again, is the much better approach to take in this case.

Finally, Your Honor, I want to turn to the chief restructuring officer application and related matter, which the Unsecured Creditors' Committee strongly believes this Court should approve.

Since shortly following its appointment, the Creditors' Committee has encouraged the debtors to retain a chief restructuring officer in these cases. And the debtors clearly heard the Creditors' Committee because they've now filed an application authorizing the retention of Mr. Robichaux

as the chief restructuring officer.

I know that Mr. Robichaux is well-known to the Court. And as you heard his testimony, the Unsecured Creditors' Committee did have input initially into the scope of his retention.

However, as demonstrated by the initial comment we filed, not all of our requested changes were incorporated into the engagement agreement that was originally filed with the Court.

Notwithstanding the initial filing, the Unsecured Creditors' Committee and the debtors continued to engage in significant negotiations regarding a revision to the scope and authority for Mr. Robichaux. The culmination of which are the terms set forth in the revised engagement that was filed with the Court on April the 28th. I cannot emphasize enough that these were hard-fought negotiations between the debtors and the Unsecured Creditors' Committee. And, frankly, Your Honor, we didn't get everything that we wanted in connection with those negotiations.

However, we think that the revised engagement provides Mr. Robichaux with the proper authority and scope of responsibility to instill confidence and assurance that these Chapter 11 cases are being independently run for the benefit of unsecured creditors and parties in interest, and the current scope and authority is certainly better than the appointment of

a full Chapter 11 trustee.

Just to point out a few things that were particularly important deal points for the Creditors' Committee in supporting the retention of a CRO here, Your Honor:

First is the ability of Mr. Robichaux to bring concerning issues he sees to the attention of the Court. This was not something included in the original scope of the CRO's engagement. But as you will see in the revised engagement agreement, as Mr. Robichaux testified to, there is now a dispute resolution process built into the revised engagement agreement that will allow Mr. Robichaux to come to court if he believes there are post petition breached of fiduciary duties.

The Unsecured Creditors' Committee also wanted the chief restructuring officer to have input regarding the assumption or rejection of executory contracts and unexpired leases. That there's been a great deal of testimony during the trial regarding how the debtors handle contracts with several of its current vendors.

As a result, you will see that there was a provision added to the revised engagement agreement which provides that the company shall receive and consider any input provided by the CRO in connection with the evaluation of, and decisions regarding, the assumption or rejection on executory contracts and unexpired leases.

Additionally, Mr. Robichaux also testified that his

role as CRO will include his review of what he said were dollars going out the door. So the issues that Ms. Lambert alluded to in connection with monies that have been spent, and are being spent, by the debtors with respect to contracts and other providers of services are something that specifically will be part of Mr. Robichaux's charge as the CRO.

Finally, Judge, and I mentioned this earlier, it's really important to the Creditors' Committee that the CRO have the ability to propose and recommend governance changes as part of any proposed Chapter 11 plan.

As Mr. Robichaux testified, you will see that there's language in the revised engagement agreement that provides him with the ability to propose appropriate government changes, specifically Mr. Robichaux will:

First, lead and be responsible for the company's efforts to pursue and effectuate this Chapter 11 bankruptcy restructuring;

Second, lead the communications and negotiations with the company's stakeholders and Creditors' Committee and parties in interest in the company's bankruptcy restructuring;

And finally, develop, negotiate and advance the plan of reorganization.

So in conclusion, Your Honor, the Unsecured Creditors' Committee strongly believes that these cases should not be dismissed as dismissal would not be in the best interest

of creditors and the estates.

The debtors' cases should remain in Chapter 11 so that the NRA has the opportunity to reorganize pursuant to a Chapter 11 plan that the debtors have stated will provide for payments of allowed claims of creditors in full.

Moreover, it is the unsecured creditors' position that an examiner should not be appointed under either provision of Section 1104.

The Creditors' Committee has also opposed the appointment of a Chapter 11 trustee. Rather, the Creditors' Committee believes the Court should approve the retention of Mr. Robichaux as the chief restructuring officer. His appointment will adequately address the bulk of the concerns of the moving parties, including concerns about allegedly conflicted management being able to comply with their fiduciary duties, and would also allow the NRA to continue its specialized mission to advocate for gun rights, and protect and defend the Second Amendment to the United States Constitution, a mission largely dependent on the continued donations from, and support of, members.

You'll recall, Your Honor, the testimony from Mr. Cotton that the appointment of a trustee would be devastating to the extent of any continued efforts to attract a larger member constituent and to raise funds.

Finally, Your Honor, given the very unique nature of

the NRA's business, we believe that the appointment of chief restructuring officer is the appropriate, practical, and lease disruptive remedy to address the issues raised in the various motions before the Court.

Thank you, Your Honor.

THE COURT: Thank you, Mr. Strubeck.

Mr. Garman?

MR. GARMAN: Yes, sir.

Your Honor, so at the outset, I have four parts to my presentation, and unlike everyone else, I'm reacting, so I've got about 600 of these Post-Its to get through, and I'm going to get through them as expeditiously as possible.

Broken into four parts, if it pleases the Court, maybe about -- after I get through Part 2, we'll take our break in accordance with your instructions.

THE COURT: That sounds good.

MR. GARMAN: Okay.

Your Honor, I'm, again, going to use and pick my words very carefully, and that I believe there has been a great deal of hyperbole. I believe there has been a great deal of leeway that has been used with the record, and I believe there has been a great deal of argument that is not based upon the record before you.

But I come before you today to make four large points, the four sections of the presentation I'm going to give

you:

The first is to talk about the case you were promised by the New York Attorney General, and the case we promised you, and to put in context the evidence you've heard. And equally as important what you were promised to hear, and what you did not hear.

Part 2 is the most important part of my presentation. Because the arguments that have been advanced to you today are suggesting that we are asking you to create fundamentally new rights to restrict states to impact sovereignty of the states in a way that has never been done before, and we're going to take a bit of a tour of the Code because exactly the opposite is the case.

We are a debtor who is here to reorganize. What do debtors do in bankruptcy? We try and solve problems. It certainly wouldn't be the first time that upon the petition date, commentators, creditors, or other parties in interest had said no way can this debtor make it through this proceeding.

We were attacked for not having sufficient corporate authority. So what did we do? We affirmed it. We ratified it. We were criticized for that, but we'll cover that.

What do debtors do? They work with their unsecured creditors' committee to try and find common ground for the treatment of creditors, to try and find common ground to solve problems, that's what we've done. We worked with our

Creditors' Committee under the leadership of Mr. Neligan to find a chief restructuring officer to provide the confidence and transparency that the parties in interest told you they lacked in this proceeding.

But on top of that, while we have spent literally 12, 14, up to 17 hours a day in this and other rooms working on this trial, what did we do? We went forth and put together a plan.

Instead of preparing for closing argument all weekend, Mr. Neligan and I spent that weekend with 76 of our friends who constitute the Board of the National Rifle Association. They approved a plan; we're going to talk about that plan. We're going to talk about how it moves us towards the end game, and moves us towards confirmation.

But what are we, as a debtor, doing? We're showing you not only how to get into bankruptcy, which is Part 2 of my presentation, but we get out of bankruptcy as a reorganized entity fulfilling the public policy set forth in the Code.

I speak once. I speak in opposition to the motions because the burdens of these movants are incredibly high. The presumption is on my side, and so I speak today, as I think I ought to, in response to the arguments you heard, but more importantly in an attempt to consolidate the evidence in a way that respectfully I don't believe has been presented to the Court this morning.

In the New York Attorney General and Ackerman's brief, and in oral arguments, they promised you a great deal, Your Honor. I'm going to use -- forgive me here -- Your Honor, I'm going to go through some of the citations of the Code, some of the evidence, and tell you not only what you did hear, but what you didn't hear.

In the State of New York's memorandum in support of not only dismissal, but appointment of a trustee, they promised you -- now this worked five minutes ago. Your Honor, one -- this worked in preps; Your Honor, one second, please.

THE COURT: Take your time.

(Pause)

MR. GARMAN: All right. All right, there we go. So, Your Honor, in support --

THE COURT: It's backwards on our screen, Mr. Garman.

MR. GARMAN: Now it's backwards on your screen?

THE COURT: Um-hum.

MR. GARMAN: It showed up normal on mine. How is it now?

THE COURT: Now it's right; thank you.

MR. GARMAN: Okay.

Your Honor, in support of their motion, the U.S. Trustee presented to you that they would provide a case of pervasive illegal conduct that the National Rifle Association -- I'm going to have to get used to doing this backwards. Wow.

-- at the National Rifle Association when taken together reflect a system of widespread misuse of assets by LaPierre and his circle of insiders for their own benefit.

Your Honor, they indicated that they would provide you a case in which LaPierre and his lieutenant syphoned off tens of millions of dollars out of the NRA for their own purpose.

Sir, respectfully, you heard that in opening, you heard that in closing. You did not hear a record in which tens of millions of dollars were used for personal benefit.

You heard a record of a $1,700 necklace that was donated to a charity that, in turn, returned $4 million.

You heard a record in which ice cream was purchased for employees.

You heard a record in which Mr. LaPierre did go to a luxury yacht, but he did not pay for that luxury yacht. It was not used by -- it was not paid for by the National Rifle Association.

You have a record that is devoid of the arguments that were advanced to you, the ones that they promised to show you in support of not only a motion to appoint a trustee, but a motion to dismiss.

They promised you a case in which tens of millions of dollars would be missing. They -- I've been involved in many trustee motions, Your Honor, I've never, literally never seen a

trustee motion in which there wasn't missing money. I've never seen a trustee motion in which there wasn't a depletion of assets that at the beginning of the case didn't ride through to the end of the case. Your Honor, I've been involved in trustee motions in which there were overseas bank accounts.

There isn't even an allegation that you heard that Mr. LaPierre did anything other than incur an excess benefit. What is an excess benefit? It's not illegal, sir. An excess benefit is one in which the IRS deems to be compensation for the purpose of tax reporting.

You heard witnesses tell you that excess benefits are, for all practical purposes, an account entry as it relates to compensation.

There is no morality component to an excess benefit. An excess benefit here was repaid.

Your Honor, post petition misconduct is the general way in which we find ourselves to a trustee. I certainly acknowledge that 1104 contemplates that it can be prepetition misconduct on the part of a debtor, but that isn't in practical reality what happens to debtors.

Creditors, the U.S. Trustee, courts, they typically look to see is the estate in danger? Is the estate being reduced by the conduct of this debtor? And here, there is no record. And, in fact, it's pointed out as a reason we shouldn't be in bankruptcy that the estate is secure and

growing.

To the extent that any party has a concern that this estate might not be subject to transparency, might not be subject to the types of restraints and controls that this estate needs, that's why we have Mr. Robichaux here.

It's also why we have a CFO who, as of yesterday, Ms. Rowling is now the elected treasurer of the National Rifle Association. She was that whistle-blower who came forward to say "I have concerns" in the summer of 2018.

Of course, Your Honor, a trustee motion can be brought under 1104 based upon prepetition conduct. But that isn't what -- that isn't what parties generally look to.

Other examples of extraordinary occurrences of what you were promised was we have heard about $200,000 in Zegna suits in the New York Times, we've heard about it in this case, we heard about it the brief, and unbelievably, we heard about it in opening statement.

Your Honor, Mr. Winkler, a witness for Ackerman McQueen, fair to say a mortal enemy of the National Rifle Association, was the first, but not the only, witness to tell us the National Rifle Association did not, and has never, paid for those suits.

This was information that has been known to the parties for months, if not years. But we repeat it as if it's a fact, and we repeat it in argument today, Your Honor, in a

way that I'm troubled. The Office of the United States Trustee, I respect immensely, they sat through all the testimony was what Ms. Lambert told you. Yet she used this fact for which there is no basis to suggest that a trustee and/or alternative relief is appropriate. And, Your Honor, it's simply not the case.

Repeating in opening, repeating in pleading, repeating in closing is not evidence. And the evidentiary record before Your Honor is incredibly limited.

Your Honor, there is suggested that you've been told that we committed fraud by the filing of this action. You've been told that the way we stumbled into bankruptcy is not only a basis to dismiss us, it's a basis for the appointment of a trustee.

You have two Board members who say I was misled by what was stated in the contract. However, Rocky Marshall, testified, and I'll bring this up in a minute, testified that he thought there was plenty of authority that existed under the January 7th authority granted to Mr. LaPierre. Yet when we come before this Court in an effort to solve what they say are misgivings, you're told the Board didn't know, the Board was misled, fraud was committed upon this Court. These are the arguments that literally went on for about 26 minutes, by my measure, in the closing arguments this morning.

Yet there isn't a single Board member here before you

today, not a single Board member who suggests that this case should be dismissed because there is a current lack of authority.

The Fifth Circuit has said ratification under the circumstances where appropriate is something that you can do. We do not, for any moment in time, admit or acknowledge that what the Board members believed to be true is that Mr. LaPierre and the Special Litigation Committee, together had the authority to file bankruptcy. We did not push the members into a untenable situation. Your Honor, the vote was 44 to one with three abstentions.

The movants would suggest to you the fact that they contemplated refiling of the case is the fact for the appointment of a trustee. But that fact should speak very clearly to the Court, which is the ability and authorization to refile demonstrates that they weren't backed into a corner. And if there was a technical misstep, they said we stand by the decisions of our leadership, we stand by the authority that was previously granted. And to the extent that you call on us to vote to file bankruptcy to protect the interest of the National Rifle Association, we do so in a number that constitutes well in excess of 95 percent yeas to nays.

Your Honor, we're like a family. There are 76 Board members, around that family table, those members do not always see eye-to-eye.

Judge Journey, certain of the leadership that's been elected, they clearly do not agree as to who ought to be running the National Rifle Association on a day-to-day basis. But there is no light, there is no crack between them on the fact that they stand behind this filing as a way to protect the interest of this unique organization.

In my opening, Your Honor, I promised you that you would hear evidence of an irreplaceable organization. Excuse me, Your Honor. I told you that you would hear evidence of uncontroverted facts that the National Rifle Association is more than what it has been portrayed to be.

In 150-year history, it has built institutions, it has built programs. I won't go into them in the length that I did in my opening, I won't go into them in the length that I did with Colonel Lee. But this organization stands for a mission: It is to promote gun safety; it is to promote security; and it is to promote freedom.

The uncontroverted evidence is that there is no one who stands in the breach to replace the National Rifle Association. It has five million members. It was suggested earlier today that that is a detriment to the organization, and not an advantage to the organization. Your Honor, there is no other Civil Rights organization of its size or scope. Five million members represents paying dues of one in 65 Americans.

We elicited testimony that we are growing; what does

that tell you? That is evidence of the fact that there is support, there is evidence of the fact that there is trust in the membership for the leaders that they elect.

You heard uncontroverted evidence that the lobbying efforts, what is now known to be, and believed to be the mission of the National Rifle Association is but 20 percent of its annual budget.

A million, a million people a year are trained in gun safety coast-to-coast, 50 states. That is not replaceable. That is a national safety program for which, again, no one stands behind us.

You heard about conservation efforts, you heard about hunting, you heard about feeding eight million meals a year to those in need. You heard our efforts in law enforcement. You heard our efforts with national competitions, with national championships. I won't go into it but, Your Honor, you heard about the community service that the National Rifle Association Endowment Foundation has, which has distributed more than $425 million to communities with which it partnerships.

You heard about scholarships. You heard about the women's Refuse to Be a Victim program; Eddie Eagle GunSafe, 32 million; our museums.

I will highlight the quarter million people who gather as a community, as a First Amendment community, the right to associate every year at the Great American Outdoor

show.

The annual meeting, 80,000 people are scheduled to go to Houston for our 150th anniversary.

But, Your Honor, you heard a lot in opening, but you didn't hear a lot in testimony of things that suggest that these programs aren't beneficial to the National Rifle Association, and I'm going to highlight one because it was very controversial until we got to this case, and that is the Women's Leadership Program. Your Honor, in the opening statement, it was stated that you will hear evidence about Mr. LaPierre's private chartered flights, not just for himself, but for his family, and other insiders, and for vacations, and to and for his wife's glam squad. For instance, to be flown on private jets or to vacation spots.

You did not hear that testimony. You heard, in fact, testimony from Colonel Lee and others, that the Women's Foundation, that squad, raised $100 million of donations and gifts for which there was a $4 million investment.

Your Honor, I asked you in my opening statement to hold both of us to the facts which we identified you would hear in this case. And I stand before you to say that those statements have not been supported.

In argument, you just heard an unsupportable record that the Board members of this National Rifle Association do not have control over the organization. And you heard argument

without evidence to suggest that the dismissal and appointment of a trustee is supportable based upon their lack of control over this organization.

Well, what's the actual testimony you heard? You heard testimony from Board members Tom King, Sandy Froman, Colonel Lee, Charles Cotton, and then you also heard testimony from Judge Journey, Buz Mills, Rocky Marshall. You heard testimony from an incredibly strong group of people who do not always agree.

I'm going to point out again that Mr. Taylor, in his closing argument, indicated that the bankruptcy was lawfully filed, and that is the position of the universal group of Board members.

Well let's talk about Ms. Froman's testimony. A Stanford, Harvard educated lawyer who gave us a bit of a seminar on what fiduciary duties in the context of nonprofits constitute. She gave extensive testimony as to why she trusts Wayne LaPierre. She gave testimony as to, when faced with a difficult question that she needed resolved Mr. LaPierre said go talk and look at the books, we're open, we're transparent. That was the actual testimony of Sandy Froman.

Can there be any doubt that that woman, that Past President, that woman who was the first partner in the third largest firm in California at its time possesses the ability to stand behind her words and exercise fiduciary duties? There

can be no question of that, Your Honor. There was no impeachment done on that point. In closing arguments you simply hear that nope, the Board didn't do its job, the Board has never done its job. We've repeated it so many times that we want it to be true even though it's not.

Your Honor, you heard from Charles Cotton, the well-respected Texas lawyer. He's both a CPA and a lawyer. He told you, he's the First Vice President, he told you that he chairs the Audit Committee. He told you everything that the Audit Committee did in the context of not only bringing the Court the whistleblowers, but in the context of creating a culture ensuring that we have the professionals that we need reviewing the contracts. Mr. Cotton testified at length as to all of the things that that independent man and that independent committee do.

Did you hear from an expert? If I were prosecuting that case I would have brought before you an expert to say the Audit Committee didn't do its job, here are examples of fiduciary duties that were not complied with. You have no evidentiary record other than speculation and conjecture for facts that are missing for the conclusory statements that fiduciary duties were not complied with.

We had a national treasure, Colonel Lee, come before this Court, a war hero, decorated, to tell this Court that he trusts the leadership of Wayne LaPierre. He is in a better

position than the speculation of the lawyers in this case. He came before this Court and told you with specific words that had he lost the confidence, he lost trust in the judgment wherefore with facts upon which evidence actually occurred to oust Mr. LaPierre, he would do so. But he said exactly the opposite. He said not only do I trust Mr. LaPierre, here are the benefits for which he provides the Association.

We're going talk about the occurrences pre-2018. It is very, very true that we don't run from happened before 2018. But Your Honor, we are safe, we are secure, we are a well-run organization. We have responsible new parties in place to ensure that the transparency, the trustworthiness that the Court and the parties require is here while we work in a very finite period of time towards a confirmation plan.

Your Honor, you heard from Phil Journey. Phil Journey, he was in the minority. Phil Journey doesn't have the same opinion as most of the NRA Board Members. But can there be any doubt that as an incredibly strong man who understands his fiduciary duties and works as the Boards to achieve what he thinks is right?

The most compelling testimony I heard on the Board is that it acts like Congress. There are 76 of them. There are not 7, there are not 11. It is not like most Boards. You heard testimony that they do not always agree, as you might imagine, in an organization that has political opinions.

Your Honor, what has been used today as an argument for the weakness of the Association is in fact its greatest strength. The disagreement that comes out of that room, that I have now sat through for days on two separate occasions, the strength of that room is its strong-willed disagreement. It is not the weakness of that room.

And to simply bring you conclusory statements in a paternalistic fashion that say this Board can't be managing it, they don't all agree, is not a basis for dismissal or for the appointment of a Trustee.

Your Honor, I would be remiss and I wouldn't be doing my clients a disservice but to remind you about not only this current Board, but the long history of this Board and the strength of the people who are there. This weekend Mr. Neligan and I spoke before that group. We were grilled by Senators and Congressmen, remarkably successful business folks, cross-examined by a Judge, one we all know. It is an intimidating room of incredibly intelligent people who take their job seriously and can agree you don't have a shred of evidence to suggest otherwise.

I would move now to this organization, Your Honor. If I were to describe in a vacuum this organization, one in which has a $300 million budget, one in which has 1,100 creditors, more than 50 pieces of ongoing litigation, $40 million of unfunded future litigation, more than $100 million

of unliquidated claims which it disputes, $30 million of secured debt, what would that organization sound like to you? That sounds like a debtor. It sounds like a debtor to me, Your Honor. We have the look, we have the feel, we are a debtor who has a reason to be here.

I'm going to cover this issue about we filed bankruptcy to get out of a piece of litigation in New York, but it's not the case. Your Honor, an incredible amount was made in the closing arguments that these debtors impermissibly transferred money amongst themselves because we don't care about our fiduciary duties. Sea Girt's money was transferred for some misdeed. Your Honor, that isn't the case. You've heard this. You've heard this in not only the testimony of Ms. Ryan, you've heard this in the context of our effort to get bank accounts opened.

It was the United States Trustee who objected to money being placed in a bank that did not have a sufficient, hadn't been approved by this region's United States Trustee program. We couldn't get a bank because of the political nature of who we are and the small amount. We couldn't get a bank that was appropriately on the list at that point in time to open the money, to open an account, a DIP account.

So what did we do? we transferred it to the NRA because they had a qualifying bank account that was in a US Trustee-approved DIP account for this region. That's being

used today against us to suggest without any evidence whatsoever that we have breached our fiduciary duties. I am troubled by how far the evidence is being stretched for illogical and impractical conclusions that aren't supported by an underlying record.

I have never, and I think the world of these lawyers, I have never sat through closing arguments in which I heard so few attempts to take actual pieces of evidence and apply them to the record that sits before the Court.

I'm going to turn to Chapter 2 now, Your Honor. Your Honor, this is, this is the most important thing I'm going to tell you today because I'm going to show you under the bankruptcy code why we are a proper debtor, why we are not asking you to expand the rights of debtors. And in fact, what I'm going to show you through the words of Congress is that the arguments being advanced by the New York Attorney General and Ackerman are contrary to what Congress has given as clear and explicit instructions. And what's being asked of you is to change the words of Congress for the purpose of limiting debtor's ability quite to the contrary of what has been asserted before Your Honor.

So Your Honor, your question. I will be the most recent lawyer to put your question up on the screen. I had to change a word, and I had to say effect of, and I had to put a couple of parens in there to make sure I understood what you

were attempting to do. And the answer to this question for the benefit of the NRA as I read it, needs to be yes. Yes, there is room for us to enter bankruptcy even though there is an alternative and parallel proceeding that is proceeding before the Court somewhere else.

Your Honor, Congress has been incredibly thoughtful. Congress has spoken with clarity and Congress has given us instructions as to how we should move forward as a debtor before this Court. Your Honor, I'm going to walk through what I think are some incredibly important components of the bankruptcy code.

Your Honor, we begin with 301. 301 is how we get into bankruptcy. 301 says, it doesn't give us a lot of details, but it says a voluntary case may be commenced by someone who may, in fact, be a debtor. Well, that's not particularly helpful, all we do know is helpful is what comes in Section 109.

109 says debtors may include everyone with the exception of railroads. It can't include a domestic insurance company, it can't include a bank, homestead associations, credit unions, industrial banks. In Section (f) it contemplates family farmers may not be included as debtors only to the extent that in Chapter 12 they qualify.

But there are some very important language in Section 109(c). And that language in 109(c) specifically contemplates

the limited circumstances in which a state, and a state is defined in Section 101 of the bankruptcy code, may limit the ability of a debtor to file for bankruptcy. In 109(c) it contemplates that state may limit municipalities by an act of a Legislature such that they cannot otherwise be debtors in any case before the Court.

109, I'm sorry, 903 codifies this component and it reserves state power for the control of municipalities. Your Honor, that's reasonably helpful for the process. I think that black letter law as we know it all stands for the proposition that nonprofits can be debtors. That issue, and I forgot the name of the case, but that issue was solved decades ago.

Nonprofits qualify to be debtors. So there must be some other reason that is being argued for which we cannot come before this Court.

The second piece of useful information that is provided by Congress is Section 106, the waiver of sovereign immunity. Congress has specifically identified circumstances in which they're going to protect the interest of states and ensure that they're not waiving sovereign immunity by participating in this process. Importantly Sections 1104 and 1112, Trustees and dismissal, those don't constitute a waiver of sovereign immunity.

You will not hear me or this argue that by participating in this process the State of New York, the

District of Columbia have waived any of their otherwise important sovereign rights by participating in this process. But here's where it becomes vastly more important, Your Honor. The consistency at which Congress speaks when it comes to alternative and parallel proceedings. When we filed bankruptcy, Your Honor, might now be a good time to take a break?

THE COURT: No, thank you. Somebody is sending, getting me some water. Thank you.

MR. GARMAN: So Your Honor, the automatic stay. The automatic stay under Section (b)(4) is very clear, and it clearly says as well all know that police powers and regulatory powers are not stayed by the bankruptcy case. We have not, will not come before this Court and tell you that the New York Attorney General proceeding has or is stayed. Congress told us how to deal with this. It is a parallel proceeding for the use of a regulatory or a police power.

We have not come before this Court and suggested that the stay extends to that proceeding. It, Your Honor, is ongoing. So the argument that you have, that you're being asked to establish a dangerous precedent to deny states of police power or regulatory proceedings rings hollow.

The idea that we are being asked, that you are being asked to set new precedent to say oh, oh, nonprofits should file bankruptcy to get out of regulatory proceedings is not

supported by the acts and conduct of this debtor.

You cannot read 362, though, without also reading 726. 726 identifies for the Court and the parties how we are to distribute property in the context not only under Chapter 7 but in the context of a plan brought before this Court. And specifically (a)(4) is the provision for which I'd ask the Court to focus. (a)(4), Congress tells us fourth in the priority scheme is the payment of allowed claims whether secured or unsecured for a fine, a penalty or a forfeiture. It goes on to say that to the extent such fine, penalty, forfeiture or damages are not compensation for actual pecuniary loss suffered by the holder of such claim.

Your Honor, there probably isn't outside of the argument I'm going to make a more important component than showing the synergy of the holistic approach that Congress has brought. Congress has said move forward without the imposition of the stay to permit a state regulatory or police power to proceed to judgment as it sees fit. But then under 726 you are obligated to bring that proceeding back to this Court for the treatment either under distribution of property in the state under Chapter 7, or in the context of what we as this debtor are doing, is filing a plan.

Yesterday we filed this plan. This plan does a number of very important things. Your Honor, this plan moves us to Texas. This plan, by the way, is not before this Court.

This plan moves us to Texas. This plan contemplates the payment of unsecured creditors in full. This plan also does a couple of other important things. One of them is to improve our governance, if it is completed.

But what can't be lost on this Court is that there are claims in Classes 6 and 7. Class 6 is the New York Attorney General claim. We are proceeding exactly as Congress told us, which is the New York Attorney General gets a claim and get treatment under a plan for the independent parallel proceeding that is not stayed, that is continuing forward in New York.

The New York Attorney General will be forced, they will be forced to acknowledge that we haven't sought to stay their action to dissolve the NRA, they will be forced to acknowledge that they have to argue that our plan is unconfirmable under one of the provisions of 1129.

The most important thing I can say at this point, Your Honor, is that that is not before the Court. The New York Attorney General and Ackerman, and I say this with as much respect as I can muster, the question you posed to us in certain ways conflate the entry into bankruptcy with the exit from bankruptcy. The entrance go bankruptcy is governed by 109 and 301. The exit of bankruptcy at least in a Chapter 11 is governed by 1129.

You cannot prejudge, except to the extent it goes to

good faith, you cannot prejudge the 1129 standard for the purpose of determining eligibility under 109. But that's exactly what the New York Attorney General and Ackerman attempt to do, is to conflate the entrance and the exit. And I fear to a certain extent that the question posed by the Court has an assumption in it, and I like all those am probably reading too much into Your Honor, you told us to be careful about that, but I am very worried that the assumption built in your question is whether or not the public policy reasons that govern 1129 and the exit and a successful plan which provides for treatment as Congress told us has been conflated with the doorway into bankruptcy.

Your Honor, on the issue of 1129 there is an incredibly infrequently used section that I'd like to point the Court's attention to, and that is 1129(d). I don't remember the last time I cited to 1129(d), but 1129(d) says a bankruptcy court shall not confirm a plan over the objection of a governmental unit to the extent that such plan impacts a tax issue, the avoidance of a tax issue, or Section 5 of the Securities Act of 1933.

The critical component of this, Your Honor, is Section 5 of the Securities Act of '33 is a police power. Congress gave us language that said in this instance of a police power bankruptcy courts cannot confirm a plan. They deliberated, they spoke, they're not silent. And for the

Ackerman and New York Attorney General argument to ring true, you must rewrite not only 109, not only 726, not only 362, you have to rewrite 1129(d).

There is no answer that they can give you other than to acknowledge that Congress spoke of when a plan cannot be confirmed when it deals with the police power of a governmental unit.

So where does that leave us? If Your Honor agrees with the debtor's position that we are qualified to enter bankruptcy we're held to the fire, the transparency, the process, the time lines that Chapter 11 governs for us. The New York Attorney General is permitted to proceed on their own time line. We are obligated and it's our burden to propose a plan consistent with the fourth priority identified in Section 726.

And do you know what we'd fight about, we'd fight about the provisions of 1129 for which we have a burden. We'd probably (a)(1), we'd probably fight about (a)(2). (a)(3) is where the case law stands on this point, which is if they can muster a case to demonstrate that this is a litigation tactic then it's an (a)(3) issue and we can't confirm a plan.

The code tells you you actually can't convert a nonprofit to a case under Chapter 7, and so it's my experience that bankruptcy courts when faced with nonprofits deny without prejudice motions to appoint Trustees, deny without prejudice

motions to dismiss cases and say I'm going to see if the debtor can confirm a plan under its burden.

Once in my life have I thought about an 1129 (a)(5) issue. I have every reason to believe that if there are concerns of this Court and there remain concerns of the Committee or other parties we'll have a fulsome debate, an evidentiary fight under 1129(a)(5). And unlike the proceeding before you today that 1129(a)(5) proceeding will be one in which we, Mr. Neligan and I, carry the burden.

Judge Markell taught me that the door and access to bankruptcy has been expanding throughout the years. There are a bunch of cases in the '30s and '40s, U.S. Supreme Court cases in which sought to restrict the access to bankruptcy courts. With the passage and implementation of the Act in '78 that slow process has continued to expand. We have ipso facto provisions, we have all of the lines of case of recent years in which we say special purpose entities with independent Directors who don't have fiduciary duties aren't going to be counted when determining whether there has been corporate authority.

Your Honor, definitely not on point, but I think that your decision from 2004 in the State Park Building Group stands for that momentum of cases in which the doors to bankruptcy continue to get wider and more open instead of more restrictive. States have attempted to limit the access of

bankruptcy to companies in good standing or companies that have not been otherwise dissolved.

The cases don't stand for that proposition. The cases stand for the proposition that there is preemption on this point. It is the constitution in, I think it's Article 6, Section 8, in which there's to be a uniform bankruptcy code throughout the country, which is our Act. Preemption flows one direction under the supremacy clause. Preemption flows that the Federal Government preempts state law.

The argument before you today is that if a state takes an action to seek dissolution of a nonprofit, that that somehow preempts Section 109, it somehow preempts the filing under 301. The tried to disguise it in the context of a motion to dismiss under 1104 but the very heart and soul of the question that the New York Attorney General brings to you is whether or not we qualify for a bankruptcy because of the fact that we have a dissolution case against us.

And I stand here incredibly certain, Your Honor, that the advocacy that has been framed before you is that we as a debtor are trying to make this the Boy Scouts paradigm that I wrote down, that we're trying to create a new, a new non-codified set of rights for nonprofit debtors facing dissolution.

And I understand the superficial appeal of that. This is a novel case. I wasn't hired until after the petition

date but I believe that the strategy that Mr. Neligan and Mr. Brewer, their teams employed in looking at creative remedies to solve the National Rife Association's problems were out of the box. They were creative. It's good lawyering.

Just because we have a checklist of how a single asset real estate case works doesn't mean that's the limit of what the tools that Congress has given us.

A question of access to Title 11 is not to be confused with an 1129 analysis. The movants have prejudged our ability to obtain treatment. They have prejudged the confirmability of our plan under 1129 and candidly brought over their skis because 1129(d) specifically contemplates what they're missing, which is Congress saying we're going to let the states close down the route to confirmation for a limited number of police powers.

At its core I stand before you for the proposition that Attorney General James cannot preempt your jurisdiction, she cannot preempt Title 11 simply because she has used the words dissolution in the lawsuit. There's no doubt that if that case had been commenced seeking a monetary fine or a penalty instead of dissolution we would fit squarely under 726.

But the movants contend because the remedy they seek contains the word dissolution the door has been closed, and that is nothing short of state preemption, which is a concept that has never existed on any point.

I ask you to have the movants respond to this in their rebuttal because there is no answer other than to frame this as state court preemption under the supremacy clause.

So Your Honor, I'd like to bring this back to your question one more time. Your question also, Mr. Strubeck discussed this, contains an issue that I think has been improperly placed before the Court in a confusing fashion. The closing phrase of your question, Your Honor, assumes that the judicial (indiscernible) that takes place in New York is a judicial determination in which the legal standard to be applied by a court takes in the best interest of the public.

Mr. Strubeck told you that that's not the case. He in certain respects stole my thunder. Under 1101 of the New York Actions for Dissolution the corporation has exceeded its authority or has violated any provisional or by its forfeited its charter is the basis by which an action is commenced, and then as Mr. Strubeck identified, it is a discretionary standard for the Judge to, by the way, it's a Jury trial, this is a Jury trial, to determine the life or death of dissolution in New York to the NRA in a test that does not contemplate the best interest of the public but instead simply puts before the Court whether this entity exceeded its statutory or chartered power, and then using the discretion of the Court.

Your Honor, one last component that I would like to highlight is that Congress told us also the effect of

confirmation. Congress tells us how a claim, how a treatment, how a plan implicates how we got there. To say this is probably among the most fulsome, wide spectrum components of how Congress has spoken to an issue, I don't think is an understatement. Section after section after section, 109, 301, 726, 1129, 1441, Congress gives us the roadmap of exactly how you deal with this specific case, this specific fact pattern.

Does it use the word dissolution? Of course it doesn't. But it's a remedy, it's a plan process, it's confirmable. We have that fight on another day. We don't have that fight before Your Honor today. It would be premature to do so. But this code, this collective statutory scheme is one in which we can and will deal with police powers.

So that leaves us with a fight under 1129 if and when this Court chooses to take up our plan. It leaves us with what will be I believe one of the most interesting confirmation hearings I've ever participated in. In addition to 1129(a)(5), which we really rarely ever fight about, we're going to talk about (a)(13) in the context of the PBGC.

But Your Honor, this sort of closes out, this does close out my Chapter 2 in my tour of the code sections that specifically permit us and this debtor to solve our problems in the way that we have.

It's probably a good time if the Court sees it fit to take our break, and when I return to present Section 3, it will

be to demonstrate to you that the law on 1129 and 1104 and the fundamental misunderstanding of what it means to dump New York and how those are implicated under those two sections.

THE COURT: Thank you. Why don't we just take a 10-minute recess because I know we're going to take a second break, so let's take 10.

(Recess at 2:32 p.m./Reconvened at 2:43 p.m.)

THE COURT: Ready, Mr. Garman.

MR. GARMAN: Are you ready for me to start, sir?

THE COURT: I'm ready.

MR. GARMAN: Yes. So, next I would like to turn to the specific request for relief under 1112 and 1104.

Originally I had these separated but after opening argument it became clear through the words of Counsel, that they are using the same facts for the application of statutes. And, so, I'll do them both at the same time.

So let's begin with dismissal, Your Honor, under 1112. It's almost, well since 1978 it has been black letter law that insolvency is not a requirement under 109 to file bankruptcy. So all of those statements, all of those statements in the openings by both movants was to file a bankruptcy you must have a debt problem. That is not the case. I'm going to tell you the public policy that we seek to base our reorganization on. It is in part financial, but it is certainly in large part, if not a larger part something else.

Let me begin with the financial component. The Committee has told you about executory contracts for which they have a concern. That is incredibly important because when the movants say to you, there's enough money to pay the creditors in full they mean if we liquidate the company it's restricted assets, it's building, we cease its operations fire 450 plus people and close down all the programs I talked about might there be enough money to pay the creditors, yeah, only if you don't include the disputed contingent unliquidated creditors. Ackerman McQueen last demand $100 million. We have secured debt of $40 million. We have 40 plus pieces of litigation. There is no evidentiary record before Your Honor, other than the conclusions that says here's the math as to how we have the ability to pay our debts. Those conclusory statements are not and should not be enough.

So we'll start where they want us to start, which is 1112(b), that's not going to be the only section of the code B1, that we walk through. And let's talk about (b)(1). That section, does in fact say shall dismiss to the extent that certain instances are found, and those are codified. There are, the burden, there's a burden to demonstrate that we have not filed this in good faith, and it doesn't shift, there's all the cases that talk about whether it shifts or not, but I want to talk about B4.

Your Honor, dismissal as Congress told us for cause

is described in 1112(b)(4) for which there are 16 codified elements. I will not stand before Your Honor and suggest that it is an exclusive list, we all know that it is a non exclusive list, but it is an incredibly fulsome list. The examples and subject matter of which cannot be disregarded by the Court. And how many of those 16 elements for cause, do we satisfy that would be the basis for dismissal. Exactly zero. Exactly zero.

Substantial or continuing loss, or diminution of the estate. That's the first one. I won't go through all 16 of course. But the movants argue that the fact that we don't have diminution of the estate and the fact that our finances are growing is cause for dismissal. I highlight that because of the incredible irony of suggesting that the opposite of what the statute stands for should be the basis for dismissal.

B2, I want to talk about this one also, because it talks about gross mismanagement, but what's left out of the discussion is of the estate. This is where the predominate component of what Congress told us to look for is postpetition conduct. Of course the statute says, particularly in the context of 1104, plea or postpetition conduct, but in the context of dismissal it's gross mismanagement of the estate. We all know that an estate cannot exist on a prepetition basis.

Unauthorized use of cash collateral, we do not have that. I want to be clear on this for the record, Your Honor, they have alleged that we misused estate funds by shifting them

from one debtor to the next, but I don't want this Court to conclude that those funds constitute cash collateral which could be the basis of a (4)(d) component. We didn't fail to comply with orders of the Court, we didn't fail to attend our 341, we haven't failed to pay our taxes, we haven't had a confirmation order revoked as contemplated by subsection L. We haven't been unable to to effectuate a plan -- we are actually moving successfully towards all of these components, non exclusive list.

So what do they talk about? They talk about the fact that the way we, I don't know whose word it was, it might have even been mine, stumbled into bankruptcy, without clear lines of communication. Dismissal bears a burden that is upon them to demonstrate that we did not file in good faith. The simple fact that we did not tell all of our management team is not the basis of dismissal. Much of what you heard was the substitution of the movants business judgment or the judgment that we should have. Particularly Counsel to Ackerman. Counsel to Ackerman argued for a pretty long period of time that New York Courts are fair, we can get a fair shake, we should do this later, our description of weaponization are improper.

All of those things are attempting to ask this Court to say replace the reasonable business judgment of the debtor in selecting to file for Chapter 11 with what we believe to be

more reasonable elements and components. Well that's not the case. The test isn't in the eyes of the Judge, was it a reasonable exercise of business judgment to enter into bankruptcy. Quite to the contrary they have a heightened burden of demonstrating that we did not file in good faith.

We talk about the couple instances of good faith in a minute, because they really do come down to a misunderstanding. I do want to talk about the standard a little bit further. I wouldn't be doing my job if I didn't remind the Court of the case law that says you should not lightly infer a lack of good faith and you should utilize your powers of dismissal only in egregious cases as the Lackawanna I'm sure I butchered that, case tells us. The Cedar Shore case tells us that good faith implies an honest intent and genuine desire on the part of a petitioner to use the statutory process to effectuate a plan of reorganization and not merely as a device to serve some sinister or unworthy purpose.

I'm going to talk about the factual record of why we filed this bankruptcy and it is vastly broader than simply trying to get out of a piece of litigation which is the New York Attorney General's case.

Parallel Paths, that case is proceeding but we filed a plan consistent with the case law, consistent with what we are obligated to demonstrate to you as a debtor that we intend to do to get out of bankruptcy. And I want to highlight five

things, which are contained in out plan. I actually want to highlight six, really important six, and it came it up in Mr. Mason's argument. Repair creditors in full. We are going to provide -- for treatment for the New York Attorney General and the D.C. Attorney General, I think one of them will be a lot simpler than the other and that the D.C. Attorney General has already consented to the jurisdiction of this Court by filing a proof of claim, in fact an amended proof of claim for monetary claim came in while we were in this case today, (indiscernible) to Texas.

Why do we want to move to Texas? The argument was advanced with no evidentiary basis that we have no ties to Texas, that's not the case. Nearly ten percent of our members live in Texas. It's the State where we are. It's the State where we can grow, it's the State that we seek to have a First Amendment association. And I mean Capital A Association in the context of that Constitutional right. What greater public policy could be served than the protection of first amendment rights, both of free speech that we believe are being infringed upon and the right to associate the way that the First Amendment contemplates it.

We spent this weekend talking about that plan. We also want to improve our governance. When the Court takes up the issue of our plan, he makes specific tangible proposals to improve our governance. Please do not take that as a

concession or an admission that our governance is not sufficient to withstand these motions but this organization like all organizations can be better.

I've got two notes here, I need to talk about. It was stated boldly stated several times without support that the reason we filed bankruptcy was so that Mr. LaPierre could protect himself from a New York State proceeding. In addition to lacking any support or authority from an evidentiary record from that perspective, it also is inconsistent with the facts of this case. This debtor did not seek to stay the New York Attorney General action in any way. We did not seek a 105 injunction to stop Mr. LaPierre from being pursued as an individual. And most importantly, you will not find in our proposed plan, not only will you not find a channeling injunction, you will not find a release for prepetition conduct by any individual.

This is a plan in which the right thing to do is to come before this Court and say, yes of course we are going to ask for a postpetition release of claims that would otherwise constitute administrative claims, but most plans contain prepetition releases and we are not going to ask for that. We didn't ask for that. Whatever the claims against Officers, Directors, third parties might be on a prepetition basis they still are. There is no implication in the New York Attorney General's action against an individual Mr. LaPierre, Mr. Frazer

there's no ability -- I'm sorry, there's no attempt on our part to shield any individual or this debtor from the reach of that action. And those statements that this bankruptcy was filed with a purpose of protecting Mr. LaPierre are not supported by the record before Your Honor or our conduct as a debtor.

Your Honor, all you heard is the language about shall under 1112 but there is an alternative again there's an alternative provision to 1112 that the movants completely ignore and that section is 1112(b)(2), in which the shall language flows the other direction. This language says that the Court may not convert a case under Chapter 7 or dismiss a case if the Court finds it specifically identifies -- (indiscernible) too excited in my presentation but it's not shall that you have to (indiscernible) or convert us -- you can't convert us because of the other statutes but it shall can't convert us if you find unusual circumstances. Everyone who has stood before you today, Your Honor, has said this is either the most important case that's ongoing in the Country -- Your Honor, I've lost you a couple of times on the video can you still hear me?

THE COURT: I can hear you, you are coming out a lot better. You broke up just a little bit, just about one minute ago. But I can hear you now.

MR. GARMAN: Okay, I think I lost everybody. So not to be repetitive but 1112(b)(2) says you shall not dismiss us,

if you find unusual circumstances or that it would benefit the public if, when you find them. There's a really interesting and persuasive case that is a Judge Lynn case and it is 1701 Commerce LLC it's a 2012 case found at 477 BR 652. And in that case, Judge Lynn found bad faith on the part of the debtor in filing a Chapter 11 case. But I'm going to read directly from the case. "For the above reasons, the court concludes that Debtor filed its chapter 11 petition in bad faith. While this would in most cases warrant granting one of the Motions, the court recognizes that in the case before it, the Property has significance for other parties whose interests deserve deference from the court. As with any chapter 11 case, the court must consider the legitimate interests of others in deciding whether to grant either of motion." And in the conclusory language, Your Honor, Judge Lynn says; I find bad faith, on the part of the debtor in the filing but I choose not to dismiss the case under 1112(b)(2) because the code says I shall not in instances in which there are unusual circumstances and not dismissing is "in the best interest of creditors and the estate."

Your Honor, I don't believe there are grounds to dismiss us but I believe there have been merely admissions by the movants and other parties in this case, that this is the most unusual of circumstances in which the constitutional protections not only of the members but of the public. And the

reason I developed that perhaps to link the evidentiary record about all the important programs that the NRA has and all the people the million plus people who we touch every year, the -- some much judicial and witness time on that point is because this is the most appropriate case I have ever encountered and it relates to an 1112(b)(2) analysis for unusual circumstances in which the best interest are taken in a more fulsome and holistic approach.

Your Honor, if you find that my argument was persuasive and that there are unusual circumstances -- not only in our programs but in the advocacy that we have under the Second Amendment also the advocacy that we have under the First Amendment in both the components of free speech as well as association -- I stand before you to propose that the code says you shall not dismiss our case.

I want to turn to 1104 next Your Honor. 1104 from a legal perspective, we all know what it says, cause including fraud and dishonesty, incompetence, gross mismanagement -- fifth circuit, huge burden. Fifth Circuit tells us extraordinary remedy that's the matter of Cajun Electric Power draconian remedy the Petman Drilling (phonetic) case tell us that, strong presumption in favor of the debtor Adelphia tells that, Patel Association (phonetic) is persuasive on this also.

There's also really strong Legislative history and I would encourage the Court not to ignore the Legislative history

that talks about the public policy of rehabilitation in general and how existing management, not the appointment of a trustee is the most "most effective" under current management who are familiar with the operations of the business involved.

Your Honor, at the meeting that I attended over the weekend, one of the past presidents, he told me a story about how the NRA doesn't have widgets, we don't sell goods or services, we don't sell a product. What we sell are the hopes and dreams of freedom and that's what the National Rifle Association stands for. And the simple fact is, is that the public policy for allowing management to pursue its mission, I literally cannot think of an organization other than a civil rights organization like ours, in which that public policy component could even remotely stand up to what Congress identified.

This burden is incredibly high, preponderance of the evidence, but it gets higher when you take into account that the, that the Legislative history tells us to look at the underlying public policy. And I stand here before you, to tell you that I believe this is balancing component. The higher and more important, the public policy is, this debtor engages in, the higher the burden must be for the appointment of a trustee.

I don't want to say, I don't want to be imprecise and I say this without hyperbole, but this is the weakest record, I have ever encountered on the area of the appointment of a

trustee. I stood before you in the opening and told you there would be cringe worthy facts. Those were delivered. Candidly, I don't think that the record was particularly fulsome, but does anyone ever want to hear about their CFO taking the Fifth Amendment; of course not. Does anyone ever want to hear that we didn't comply with our internal policies as well as we could; of course not. The simply fact is, we had our own course correction. Why did we have our own course correction because there were circumstances in which it became best business, exercise of fiduciary duty to make that course correction. But it is old, it is cold, it is stale, it has been cured. And the burden cannot be met. And I again, contend, Your Honor, that I know the statute talks about prepetition and post petition conduct, but it is not my experience that prepetition conduct in things like, we didn't fill out our internal forms correctly or we had to repay a tax benefit. Those aren't the sort of things I've had experience in the appointment of a trustee. I've had experience when there are foreign bank accounts, I've had experience when there's missing money, appointing a trustee. I was involved in a case in which actual live gun fire was the basis for the appointment of a trustee, you know which is sort of ironic here, but those are the bases, those are the extreme examples of the things that constitute the appointment of a trustee.

The testimony of Col. Lee, I think is of particular

importance when it comes to the issue of a trustee. We listened to testimony at length about the bond that is the basis of the connection between the National Rifle Association and its members. The fact that money is donated because our members and not just our members those who donate money to the cause, the mission and the programs, they do it because there is trust. Mr. Robichaux, he testified to an often forgotten point of fiduciary duties which is a fiduciary has to have a fiduciary obligation to the mission. How hard is it to imagine a scenario in which a US Trustee could assume the obligations of our mission, which in part is to advocate in a way that is often contrary to its own Department of Justice policies relates to the scope of the Second Amendment.

That bond cannot be broken, Your Honor. Mr. Strubeck and I coordinated our arguments for efficiency before we both argued and we agreed that he would predominately lead the advocacy as it relates to the examiner motion and the motion for a CRO. But I do need to stray into the CRO component here for a bit.

The reason that the scope of duties was thoughtfully put together the way that it was to be presented to Your Honor is that we had to walk this balance. The members, they are unlikely to continue to support the mission of the organization to the extent they believe the mission related objectives, the Second Amendment advocacy, the arguments before the U.S.

Supreme Court, the message, the membership is in the hands of someone they did not elect. That's why we broke into components, that's why we broke it into a mission component, and a business operation component. But the comfort level, the comfort level that this estate, these parties in interest should experience should be the same. And the reason should be the same as, Mr. Schroop is in charge of the money, all the money, he's in charge of treasury, he's in charge of legal, he's in charge of finance. Ms. Rowling reports to him. The simple fact is, this CRO motion is incredibly thoughtful in the way that it's tailored to this particular debtor to achieve the maximum ability to reorganize yet give the constituency, -- which Mr. Strubeck is right, he and Mr. Drake, they were the factor that pushed us towards reengaging a CRO moving towards a position of compromise, because that's what debtors do. It is my job, it is Mr. Neligan's job, what do we do, we solve problems. Getting this debtor on board with its own secured creditors committee is the next domino towards plan confirmation. Lots of steps to be had. But this is what experienced bankruptcy lawyers do, to drive us through the public policy which is confirmation at the end of the day.

So where does that turn, Your Honor? I do need to talk about the course correction. I do need to talk about the actual evidence that's in the record. I need to talk about good faith and I think that, I think that I'm going to be done

well short of the time that's been allocated to me. But I do want to talk about the evidentiary record. And I would begin with in the late days of 2017, Attorney General Schneiderman that's the call. We heard the words Attorney General Schneiderman called Tom King, I don't know how many times we heard that in this trial, but it is the catalyst that began this process of how we got here today. And it is the catalyst that I believe will ultimately be successful when we confirm a plan.

In those late dates of 2017 sitting Attorney General, a democrat, which is mildly relevant to this discussion as it relates to good faith, it isn't mildly relevant, it is relevant, calls Tom King a board member. We know this from Tom King's April 21 testimony page 17, line 172. We hear his testimony that, and I'm paraphrasing here, but we hear his testimony that the wheels of Government have been put in motion for the purpose of silencing the National Rifle Association.

This is incredibly important and it's been conflated. The movants would tell you that the only reason that we are here, is because we are trying to flee an existing litigation case. But that's not what the evidence was before the Court. It's very skillful advocacy but the evidence before the Court -- - Yes we used some language that I wish we hadn't used, which is dump New York, it's true, it's honest, it's probably not the language that a lawyer would want to have to advocate in front

of Your Honor. We used the language that we want to dump New York. Does that say or mean that we want to dump New York for the purpose of getting out a piece of litigation for the purpose of a litigation strategic benefit in that litigation? Of course it doesn't.

The evidence before the Court was vastly broader than that. And we admitted a bunch of -- we admitted a bunch of evidence the Court hasn't actually seen yet, which I think is incredibly relevant on this point. Hold on.

So I want to begin with NRA Exhibit 663 which was admitted and it's Exhibit 663 and it begins on page 47. This is a memo on New York State Letterhead, dated April 19th, 2018 in which Governor Cuomo directs the Department of Financial Services to urge companies to weigh the reputational risk in business ties to the NRA. Here is what's really important in this, is that, this is First Amendment stuff. New York may have the strongest gun laws in the Country but we must push forward to insure that gun safety is a top priority for every individual company, organization that does business across the State, Governor Cuomo said. I am directing the Department of Financial Services to urge, insurers and bankers statewide, to determine whether any relationship they may have with the NRA or similar organizations sends the wrong message to their clients and their communities who often look to them for guidance and support.

There's a couple of subtle things in here, Your Honor, that are so critically important to our move that I'm going to draw them out because they can't be lost. Did Governor Cuomo say, don't do business with the NRA because they don't uphold their charitable charter? Does Governor Cuomo say they haven't complied with the obligations of a non profit in the State of New York; he does not. He says the political speech, the First Amendment advocacy of the National Rifle Association poses a risk to our State and I am directing the Government, I am directing the Government to do what it can to cause ties to be broken with the National Rifle Association.

We commenced a lawsuit over this, because it is the most egregious example I have ever seen of a Government using State power for the purpose of silencing the First Amendment advocacy of its foe. But this document does not stand for the proposition that the State of New York became hostile, became weaponized in the words of Mr. LaPierre for the purpose of compliance with charitable requirements. This is the beginning of why not only we started the course correction, this is the beginning of our exodus from New York because public policy permits us to be in a place where we can exercise our Constitutional rights.

It is incredibly rare that the First Amendment clashes with the Bankruptcy Code in a fashion in which the policy considerations that underpin the reorganization are

premised upon the types of arguments that usually make their way to the United States Supreme Court.

The second document, Your Honor, that's important for this component is the actual DFS letter that was sent to financial institutions. Later, I would ask Your Honor to look at NRA Exhibit 663 at Page 50. This is where the State of New York actually goes to the financial institutions. And on Page 2, the closing sentence says "The Department encourages its chartered and licensed financial institutions to continue evaluating and managing their risks, including reputational risks that may arise from dealings with the National Rifle Association." They point us out by name. This is an action by the Government specifically targeting the National Rifle Association. This was sent to financial institutions.

Page 53, a couple of pages back, same Exhibit 663, there is a nearly identical memorandum that is sent to insurance companies. It is sent to all insurers doing business. Now, Your Honor I'm going to go back to the first exhibit that I had because this is of critical importance for establishing our good faith for the filing of bankruptcy on this record. If you read the last -- and so to go back, this is Governor Cuomo's press release on New York letterhead. This is NRA Exhibit 663, Page 47 -- won't fit.

What it says is, "The DFS urges all insurance companies and banks doing business in New York to join the

companies that have already discontinued their arrangements with the NRA and to take prompt action to manage these risks and promote public health and safety." Okay.

Why is this important? This is important because Craig Spray testified. He testified on April 13th, on Page 1624 of the transcript, "that even prior to showing up to the first day, I was dialing into bank meetings. And it was very obvious to me that the banks were giving every sell" -- that should be an S, not a C -- "signal that they could." He goes on to testify that -- this is uncontroverted testimony. "It is not non-trivial when you put those out to bid and you have to move your accounts and get your loans renegotiated and moved. It was a non-trivial evolution."

At the bottom of the page, and this is the most important testimony I believe Mr. Spray has on the issue of our good faith is that insurance at any price was becoming very difficult, again, specifically around D and O lines. And you know, effectively, you know, there is more than one way to kill an organization. This is the existential threat that the National Rifle Association was facing before Attorney General James commenced her action for dissolution.

Your Honor, an existential threat because a government actor has taken steps to deny you the ability to have banking relationships and to have D and O insurance is a way, according to the words of Craig Spray that are

uncontested, to put this organization out of business. This is a basis by which we sought to reorganize in the State of Texas. This is a purpose, a public policy purpose. We have the right to exist. We have the right to live. We have the right to exert our First and Second Amendment rights, and this cannot be lost as a basis for us attempting to move to the State of Texas.

This for the avoidance of doubt does not constitute a police power. It does not constitute a regulatory power. Those are actions in which the conduct of the association are found to be inconsistent with the requirements and the regulations of the State of New York. That's not what this is. This is a situation in which our speech, our public policy speech, was under attack for the purpose of denying us our existence.

Is there any public policy that is held more dearly by Americans than the First Amendment? I contend the answer to that is no, and I contend this is uncontroverted testimony for which the movants did not seek to rebut. Craig Spray, he is the best example of the dire situation, the risk situation in which this entity exists.

John Frazer, at Page 86 of his testimony on Lines 23 through 25, provides you testimony that this will never end. This just goes on and on and on. You then have undisputed testimony from board members, you have it from Colonel Lee who

says that Letitia James called him and the Association a criminal enterprise and a terrorist. That's found in his testimony of April 21, Page 84, Lines 9 through 25. Mr. Cotton testifies on Day 2, April 6th, Page 361, Lines 9 through 12, the same thing. You have Sandy Froman on the 7th, Page 84, Lines 8 through 11. And most tellingly, you have actually Judge Journey.

Judge Journey testifies that "I do know what she said campaigning on -- I don't know what she -- she certainly was predisposed because she wants to keep her campaign promise which was to destroy the terrorists like me, in their estimation." We agree with Judge Journey far more often than we disagree with him. But at the end of the day, this was the action that was taken in New York that put us on the course correction.

So the course correction comes. I can go over a lot of testimony in this. I'm going to move through this a little faster. You heard from Charles Cotton, you heard from John Frazer, you heard from Wayne LaPierre, Sonya Rowling, Craig Spray, Willes Lee, Michael Erstling, Bill Moore. Everyone of those witnesses testified to the proposition that there was a course correction that began in late 2017 with the phone call. It resulted in the hiring of Morgan Lewis first. But then it proceeded. It proceeded in 2018.

In the opening arguments, arguments were made that we

didn't make changes overnight and even after we commenced our course correction in 2018 that things continued to need improvement. A course correction doesn't occur overnight.

Your Honor, it's indisputable that a course correction occurred in 2018 for the purpose of righting the ship. The timeline is fairly condensed and it's uncontroverted. Charles Cotton testified on Day 2, April 6th, that at the end of 2017, Morgan Lewis was hired to give us a non-profit evaluation. And let's skip some of the exhibits.

In March, things begin faster and more earnest. On March 7th, Charles Cotton testified that the audit committee met to go over the RSM 2018 audit, an audit that came back clean. Your Honor, it's worth noting this because I think there has been a misapplication of the law on this point.

Exhibit 65 is where I refer the Court to. Exhibit 65 is that audit report which was introduced into evidence. The RSM audit for March of 2018 and it contains a couple of notable provisions that make the course correction all the more important. It came up clean. And what does that mean? It came up clean because they did not identify any significant or unusual transactions, significant accounting policies or controversies for which there was a lack of authoritative guidance of consensus.

It comes up clean. They didn't find any material uncorrected misstatements. It comes up clean that there were

no significant issues arising from the subject of the investigation.

Your Honor, the reason this is important and what has been missed in the legal arguments you've heard to date is that Section 717, 7-1-7, of New York's Not-for-Profit Corporate Statute, is the business judgment, the fiduciary duties that board members can rely upon. And I would encourage you to look at Section 717 of the New York Not-for-Profit Corporate Statute, which specifically contemplates that board members may rely upon counsel -- this is romanette ii -- counsel, public accountants, or other persons as to matters which the directors, officers, or key persons believe to be within accordance with a provision of the certificate of incorporation and by-laws. I'm sorry, misread it, counsel, public accountants, or other persons as to a matter which the directors, officers, or key persons believe to be within such person's professional or expert confidence.

So Your Honor, the argument was advanced this morning that these board members breached their duties because they didn't know of conduct of Mr. Phillips and/or others. That's not what the law says. What the law says is that these board members relied upon an outside auditor who gave them a report for which they are justified and expected to rely upon because that outside auditor has more subject matter expertise than they do. That's statute, New York law, cannot be the basis for

the appointment of a trustee as it relates to the conduct of the board members for which you heard argument even though it was unsupported by the record this morning.

Uncontroverted testimony that March is the big month. That's when the Brewer firm was hired. The Brewer firm was hired. We know this because Tom King tells us on April 21st at Page 174 of his testimony that powerful people are coming after the NRA and that they should hire a New York based law firm. That same component is testified to by Charles Cotton on April 6th, Page 399, in which he says the Brewer firm was hired at the recommendation of then board counsel, Steve Hart.

You heard testimony that they wanted a New York lawyer who was hard-hitting for the purpose of taking on the State of New York. A summary, a demonstrative of some sort, was shown to you this morning for the purpose of trying to suggest that dismissal, dismissal for the appointment of a trustee was appropriate because legal fees increased.

You heard testimony from most of the board members that $60-plus million is an extraordinary amount of money and one for which they worry. It rings incredibly hollow though, Your Honor, for the adversaries for which that money was spent come forward for the purpose of saying you should appoint a trustee, strip the debtor of its chosen counsel who's fighting us because the bills are too high.

The New York Attorney General, they have told us they

have no monetary claim. The idea that they stand before this Court and suggest that a trustee should be appointed, not because their claim can't be paid but because they don't want to fight the Brewer firm as an adversary, it rings hollow, sir.

That same month, Craig Spray is hired. We've heard his experience. It's actually undisputed that he was a benefit to the Association. He came with a background of public company experience. But what is missing is that on Day 5 of the trial, he testified on Line -- I'm sorry, on Page 1619, Lines 6 through 11, that he was a short timer. He testified that the duration of his employment was intended by him to be three years.

There's a record in which some people said he was fired. Some people said that he quit because of health reasons. The reality is is that probably there's a lot of miscommunication going on from a lot of people. But Craig Spray didn't run from the fact that he made it known to his employer that he did not plan to stay more than three years and there is uncontroverted testimony that Mr. Spray actually vacated his office and had health concerns that were restricting his ability to perform within the office.

I'm going to move a little faster, Your Honor. Craig Spray testified to improving internal controls, reviewing contracts, looking at backup, expense reports, a new credit card policy, and most importantly, encouraging whistleblowers.

On April 21st, at Page 255, Michael Erstling tells us that Craig Spray asked questions about invoices and billings and tells the whistleblowers to go share their concerns with the Brewer firm. And what happens? That's exactly what happens.

Sonya Rowling tells us in her testimony that Mr. Spray -- she gave her concerns to Mr. Spray and the Brewer firm, and it was the Brewer firm's involvement in creating the list of concerns that became the basis for the audit committee taking this up the following month. Craig Spray tells us that he couldn't have done this without Wayne LaPierre. This is such important testimony, Your Honor, I'm going to put it on the screen.

If you believe what the movants tell you, Craig Spray was fired and held a grudge for what occurred. But yet, Craig Spray, when he testifies on -- and this by the way on April 13th on Page 1627, beginning at Line 23, he says "We were very successful in implementing change. And I can't see anything of that magnitude happening if Mr. LaPierre wasn't supporting it. Not just in front of (indiscernible) but publicly and behind closed doors. If he was, you know, kind of rolling his eyes at the thought of improved compliance, or whatever, there's no way I would have been able to accomplish what -- what -- what the team accomplished. And so he was very supportive to me, both in person and in action, in front of me, but more importantly, I felt supported in those areas when

he -- when I wasn't in the room."

Craig Spray is not the person the movants would have you identify as the one who says Wayne LaPierre was responsible for ensuring that this world of compliance came to be. They may not like the testimony. They may not believe the testimony. But the uncontroverted testimony of Wayne LaPierre is that he said the 360 evaluation, the top-down review, the course correction was his idea and we heard more than once that he was willing to risk every friend he had to ensure that the National Rifle Association was in full compliance with New York State law.

That testimony is disregarded. And the idea that it was advanced in oral argument that a trustee or dismissal is appropriate because Mr. LaPierre was cutoff from testifying is just incomprehensible in the context of an actual legal standard how it could be argued that Mr. LaPierre's demeanor on the stand is a basis with a high burden of demonstrating that a trustee or dismissal should be found at the end of the day.

So, what do we know? The record, again, uncontroverted. The whistleblowers meet with the Brewer firm. After meeting with the Brewer firm, the whistleblowers compile their top concerns list. That top concerns list is Ackerman Exhibit 41. It concerned about conflicts of interest, related party transactions, (indiscernible) vendors, control overrides, budget and contractual limits that are not followed, vague

invoices. These are the concerns of the whistleblowers who are now in control of the National Rifle Association. You were told a story unsupported by the evidence in which dissenters and which those who don't play by Wayne's rules, those who rock the boat, are purged and pushed from the organization without evidence.

What does the evidence tell you? The evidence tells you that the primary whistleblower, Sonya Rowling, has not only been made the acting chief financial officer, but she has now been elected to the treasurer's seat, one of three elected officials at the National Rifle Association. It's more than an inconvenient fact for the movants. It's actual evidence that demonstrates a complete role reversal of what has been portrayed to this Court. It is not a world in which those who don't play by Wayne's rules and those who rock the boat are pushed out. It is in fact a world in which the evidence tells us that those people are promoted.

Sonya Rowling, Michael Erstling, two of the whistleblowers, they tell you, they testified before Your Honor in the late stages of our case that their concerns are satisfied. Their concerns are all satisfied. The National Rifle Association has righted its ship. It did so beginning in 2018 and they have no more concerns about that top list. What they do tell you is that there were vendors that were problems. They do tell you about 100-plus letters that go out in the

Wayne days of 2018. In my opening statement, this is the point in time that I call the line of demarcation. In my opening statement, I said of course not everything was going to be fixed by late summer of 2018. But this is when the self-correction occurred, and this is when the safe harbor efforts began. Importantly, that is nearly three years ago.

Principled path. How many witnesses testified to the principled path? What does the self-correction mean? Sonya Rowling and Charles Cotton gave us the answer to this. Sonya Rowling testified that it was documentation and approval for contracts. It was no more vague invoices or documentation. Charles Cotton told us on Day 2, at Page 82, that disclosure of related party transactions, evaluation by the audit committee for disclosure, approval, denial. He also told us about disgorgement that included corporate waste and badges of fraud.

Charles Cotton told us about disgorgement as it relates to Colonel North and lawsuits. This case, this is not about the dispute between Ackerman McQueen and this debtor. These are two parties that clearly don't like each other. These are two parties that have a 40-year history together. These are two parties who both believe that the other owes them money. That fight is not the basis of a trustee motion. Does goes to (indiscernible), but it's not the basis of a trustee motion. But it does spill over.

To suggest that Colonel North was a whistleblower, to

suggest that Colonel North was purged from the Association because he wouldn't play ball beguiles the actual testimony which is, Charles Cotton said, his contract with Ackerman McQueen was hidden from the audit committee and hidden from the Association, and when they saw it, and they saw that their president had a fiduciary duty to Ackerman McQueen to the exclusion of the duties the president would owe to the National Rifle Association, they said no. They said that can't be the circumstances for our president and Oliver North left and has not returned of his own accord.

NRA Exhibits 270, 271, 272, 273, and NYAG 60. These are exhibits of the board and the audit committee and the actions they took and the course correction that demonstrate what was done. The audit committee met often. Charles Cotton told us that. Conflict disclosures, Frazer told us about that on Page 505 of his testimony.

Vendor approvals, Sonya Rowling told us about that. Craig Spray told us that in August of '18, we sent 100-plus letters to vendors. It was Michael Erstling on April 21st at Page 265. Michael Erstling tells us that the NRA began to terminate contracts with those vendors who wouldn't comply with NRA -- well, the NRA policies. This is when the relationship with Ackerman McQueen goes south. It is of, again, modest relevance to the appointment of a trustee. The claims back and forth will find their way through the claims process or through

litigation, but the simple fact is is that they were one of the vendors, at least according to the National Rifle Association, who would not play ball under the National Rifle Association guidelines.

NRA Exhibit 270 shows us that in September of '18 Brewer presents a strategy to go on the offensive. Yes, it's going to require money. Yes, it's going to require a fight. But we've already seen the documents in which the New York Attorney General is -- I'm sorry, the State of New York through its governor, through its Department of Financial Services, Maria Vullo. We've seen that they are on the attack taking active steps to impair and injure the National Rifle Association.

So the National Rifle Association hires an incredibly hard-hitting lawyer. I think Bill Brewer would be proud of being called a hard-hitting lawyer. That's who they needed. I believe, Your Honor -- I believe the evidence demonstrates that the Brewer firm saved the NRA. I believe that it was an incredibly expensive endeavor for which they worked night and day. But at the end of the day, Your Honor, there is no evidence other than the evidence of the client, who when exercising their fiduciary duties, said that's an extraordinary amount of money. But to save an irreplaceable and priceless organization, we had to spend it.

Greg Plotts testified. Greg Plotts was an auditor.

He came forward and told you how we knew -- he knew facts and circumstances and allegations of misconduct, they were sensitive to those. They looked for those problems. Yet, what did we get? We got a clean audit. Nothing gave rise to the level of materiality.

Yeah, we were forced to sue Ackerman McQueen, the books and records case. Again, I don't think it's relevant except for the motive of certain actions and allegations that had been made against National Rifle Association personnel. It is two weeks, less than two weeks after the commencement of that lawsuit that the letter comes that is not the infamous letter asking for 16-year old backup for suits and Mr. LaPierre had them. Sixteen years they waited until less than 14 days after the commencement of the lawsuit.

AMc Exhibit 163, NRA Exhibit 261, AMc Exhibit 176, these are the documents that evidence the motivations of Ackerman McQueen as it comes in those final weeks of -- I'm sorry, those final months of 2018. It is NRA Exhibit 272 in which the audit committee rescinds Colonel North's contract with Ackerman McQueen. The final piece of this component of our course correction, we begin to clean house.

It's fair to say that I misspoke in my opening statement when I said the National Rifle Association fired Chris Cox. I regret being less than precise. The National Rifle Association put Chris Cox on administrative leave. They

then parted ways. He was their lead lobbyist.

Josh Powell, concerns from the whistleblowers, concerns from Ackerman McQueen, Josh Powell. He parts ways at the decision of the National Rifle Association. Testimony was that he was Wayne LaPierre's right-hand man. Self disclosure. Safe harbor. The NRA finds that even Mr. LaPierre is subject to examination and review, and that brings us to the infamous 990.

How there couldn't be two ships passing in the night more than on this 990. The NYAG has suggested that the debtor has not come forward and proven that the 990 is accurate. Your Honor, that is not our obligation to do. It is filed under penalty of perjury. It has been suggested that because Mr. LaPierre signed it, others refused to and were fired for it. There's no testimony for that. Mr. Spray indicated that he felt on the outs because he wouldn't sign it, but in no way does that stand for the proposition that it was retaliation for him refusing to sign it. Mr. LaPierre testified that he was proud of it.

You have not heard a shred of evidence to suggest that the 990 is inaccurate. Conjecture? Well, there must have been more flights. Speculation? Where are the black cars? Where are the meals? None of that is evidence. None of that meets an affirmative high burden to either get dismissal or the appointment of a trustee. Rhetorical questions about why

hasn't the NRA done more? Why was the NRA scared of New York? These are not questions that meet the burden.

Self-disclosure, safe harbor, full internal 360 review, no evidence that the 990 that was filed is inaccurate. But the simple fact that we investigated Mr. LaPierre demanded, and that's what happened. The testimony is, "We demanded a refund of certain amounts that were paid on his behalf that he paid is evidence of impropriety." Your Honor, an excess benefit is a tax compensation issue. It's a form filed with the Internal Revenue Service. The Internal Revenue Service has taken no issue with our 990. They've not suggested it's improper; they've not to assert any form of criminal penalty or illegality as the New York Attorney General would have you believe.

Mr. LaPierre, according to his own testimony on, I believe it was Day 3, Page 262, he testifies that he repaid just over $300,000 which was the full amount the National Rifle Association sought back from him for the period 2015 forward, including he had to pay on top of that $70,000 more in taxes.

Your Honor, we shut down NRA TV. That's moderately important. But then comes Exhibit 663. 663 is the lawsuit in which we sue the State of New York. This fractured relationship gets even worse. This fractured relationship becomes one in which we're forced to sue under the First Amendment to protect our interest, to protect our public

policy. This is the origin of the next step of us seeking to leave New York to come to Texas.

Who comes to our rescue? The ACLU, sixteen attorneys general. We'll talk about the Amicus Briefs filed in this case. But this is not a case in which the National Rifle Association is alone in the wilderness asserting that its rights are being trampled on.

Then comes, Your Honor, August 6, 2020. This is the day in which the New York Attorney General seeks dissolution. The movants would have you believe that the only reason that we seek to leave New York via this bankruptcy case, the only reason is to gain a litigation advantage in that case. Now rhetorically, I'll ask, what litigation advantage do we get in a case that we have not sought to stay or stop? What litigation advantage do we get in a case in which we've proposed treatment under a class or them in our plan?

Your Honor, this action goes to the good faith of this moving and it definitely goes to the timing. Your Honor, I'm going to play a clip of a video, short clip, which is NRA Exhibit 675. It's been admitted. This is a video from the Office of the Attorney General in which Attorney General James discusses three things. She discusses what she alleges is wildly unproven embezzlement from the National Rifle Association that she seeks disillusion of the National Rifle Association and that she may seek to freeze the assets of the

National Rifle Association.

(NRA Exhibit 675 Video begins at 3:44:20)

"MS. JAMES: Good morning. I want to thank you all for joining me. I am joined here this morning by the Chief of the Charities Bureau, Jim Sheehan, the Co-Chief of the Enforcement Section, Emily Stern.

"Just a few minutes ago, my office filed a lawsuit against the National Rifle Association to dissolve the organization in its entirety for years of self-dealing and illegal conduct that violate New York's charities law and undermine its own mission.

"UNIDENTIFIED SPEAKER: Next, personal counsel, Eric Larson of (indiscernible).

"MR. LARSON: Yes, hello. The allegations that you've laid out here suggest that the NRA donors and members here were really essentially victimized allegedly by these actions. And then, is it not further victimizing them by forcing their, you know, their organization to close, an organization that's pretty popular across the whole country. Is that necessarily fair to these victims here.

"MS. JAMES: The issue is the following:

"A number of donors have contributed to the NRA because they believe in their mission. At this point in time, the NRA right now is financially is in a deficit. I mean, as a result of four individual defendants who have basically looted

its assets. And so one would think that the donors would like for an organization to have some governance, some standards, some standards of behavior and that they would recognize their fiduciary duty to not-for-profit and/or its mission as opposed to looting assets and using it for their own personal benefit and/or -- and their family.

"UNIDENTIFIED SPEAKER: Thank you very much for your -- in this call, Attorney Generals.

"My question is, will you attempt to freeze the assets of the targets in this investigation, or of the NRA or any way try and prevent them doing business (indiscernible)?

"MS. JAMES: That is one of the remedies that we are seeking in our pleadings and so we look forward to again doing investigation to determine if there are any other hidden assets, whether or not they can be frozen. Again, for the purposes of benefitting those donors we've given to the NRA over the years for its intended mission."

(End of recording at 3:47:02)

MR. GARMAN: So Your Honor, what we have is, I'll call inelegantly, *prima facie* evidence as to reaffirm the National Rifle Association's good faith for trying to protect its assets for the benefit of its members. Allegations of looting, allegations of freezing our assets, apparently an admission or claim that we are in a deficit, which I believe in the context of that comment to mean insolvent, seeking

dissolution of the National Rifle Association.

It is not improper to file a bankruptcy based upon those allegations. It is not improper to file a bankruptcy based upon the fear of a receiver. Is it a realistic possibility based upon watching that video that members of the National Rifle Association, including Mr. LaPierre, or members of the special litigation committee would be fearful that she would seek the appointment of a receiver to freeze our assets? Of course not.

But what you hear from the movants is that it hadn't been done yet. There was still time. You don't need to file. You have appellate rights. All of those are substituting the business judgment of an adversary of the National Rifle Association in determining when and if to seek its protected rights under 301 and 109 -- 3109 of the Bankruptcy Code under Title 11. Again, a right that -- we rarely say this -- is in fact a right as identified in the Constitution.

So I'm going to wrap this up relatively quickly, Your Honor. I think I can be done in two hours as opposed to three. In August of '20, that case is filed. Very shortly thereafter, I believe it's the first week of September, the testimony is that the special litigation committee is formed. Why is it formed? The testimony of John Frazer. Well, Mr. Frazer, Mr. LaPierre, the general counsel, and the executive vice president were individually named, the appropriate thing to do

is to recuse yourself from that litigation. They fault us for the fact that Mr. Frazer did the ethically appropriate thing, which is to recuse himself from the process. They fault us and say that because he wasn't included in the legal strategy of a bankruptcy that in some small part is in response to that lawsuit, that it's somehow the basis for a trustee or the basis for dismissal.

How can it be that a lawyer exercising his ethical obligations to ensure that he doesn't find himself in a conflict situation for which he is making a decision or input on behalf of a client can be used as the basis to suggest that we have breached our ethical duties in such a fashion that the appointment of a trustee is appropriate? That is an illogical conclusion for which it is unsustainable to say that dismissal or a trustee are appropriate under those circumstances.

We didn't tell Mr. Frazer the day we filed but the uncontroverted testimony is that he knew about it all the way back in the fall when he learned of the bankruptcy research. That's found in testimony at Pages 286 through 287. The SLC, Charles Cotton testifies at Page 174, Lines 14, that beginning in the fourth quarter, efforts were underway to look at strategic alternatives, including bankruptcy.

A lot has been made, a lot has been identified that on April 7th, there is a suspicion that the board was misled. There is this really interesting fact, Your Honor, which is the

New York Attorney General -- actually, I don't have a piece of paper here. It might be a flaw with my system. The New York Attorney General actually sued us and if you read their complaint, one of the allegations is that the board didn't approve executive contracts.

If somebody could find me the citation for this. The New York Attorney General in its eleventh cause of action, Paragraph 614 through probably 617, one of the bases was asserted we breached our fiduciary duties is because the board didn't take up the issue of executive contracts. Yet, what do they do? They turn around and say that because the board took up the issue of Wayne LaPierre's contract at the January 7th meeting, we've now breached our fiduciary duties in the other direction. It can't be had both ways.

This board does not believe, not a member of it believes, that today, we don't have a valid, ratified approved bankruptcy. The debtor does believe that we have all the authority we needed under Mr. LaPierre's contract. But they cannot have it both ways and suggest that we've breached our duties by not approving contracts and then turn around and say, well, you should have appointed a trustee because Mr. LaPierre's contract had never previously been before the board and this was clearly part of a conspiracy without evidence to mislead a board whom only one member of which believes it was misled.

That complaint is -- does anybody know the exhibit number of this is?

I'll move on, Your Honor, and come back to it.

In November, we filed a 990 for 2019. Moving forward, Mr. Neligan is engaged in November, November 23, 2020. That's Exhibit 298. It's not unusual for a bankruptcy attorney to be hired to provide analysis when no bankruptcy has commenced. The idea that the hiring of Mr. Neligan is evidence in and of itself of an intent to mislead the board is not sustainable. The exclusive testimony of Mr. LaPierre, Colonel Lee, Mr. Cotton -- is that twelfth, thirteenth, fourteenth, somewhere in there, they identify that they were going to file for bankruptcy.

Your Honor, Mr. Ciciliano has found the complaint I have referring to is NYAG Exhibit 107 and the paragraphs I'm referring to are found on Page 154.

The next argument that's made is that well, we somehow did something improper because Mr. Brewer and Mr. Neligan were paid current, outside of a cycle, not in accordance with National Rifle Association policy.

Your Honor, I've never been involved in a bankruptcy in which debtor's counsel wasn't paid current on the petition date. Never once have I been involved in a bankruptcy because, first, we would be conflicted and we would have to either waive our fee or not be able to act as counsel to the debtor.

And the second thing is that much was said that this was a preference. When you have full pay the unsecured creditors wouldn't do any better than a seven than they do in 11, and you can't do better than full pay, Your Honor, we all know there is no preference. On March 28th, NYAG 199, Mr. Neligan and I meet with the board. We meet extensively. We talk about affirmation, ratification.

Rocky Marshall, his testimony was that he doesn't agree with the debtor, but his understanding is that we have plenty of authority after the 7th. That testimony came out on April 20th, Page 73 and Page 92.

Your Honor, kind of final points here I want to cover. There is no evidence, and there is certainly no clear and convincing evidence of fraud, dishonesty, gross mismanagement, or incompetence post-petition. They try and shoehorn it in pre-petition. They've made the argument as to why it's too little. Why it's a continuation of management. Why we have Rowling. Why we have Robichaux. Why we have a new audit committee, we have new board members. These folks are all the comfort that these estates and these creditors need.

We have an active and engaged board of directors. Notwithstanding what the move-ins would tell you. You heard from a subset of them. In hindsight, if there's one thing I could do over and one thing I would provide more testimony of, it would be more board members testifying because I will tell

you, I'm not one to be nervous presenting in front of a room, but that room, the horsepower that 76 of them from top to bottom, from senator, congressman, to judge, it's an intimidating and impressive group.

Sonya Rowling is our CFO. She's now our treasurer. We have filed a plan. Her and Michael Erstling have testified that they have no concerns over what the whistleblowers identified. There is no evidence of clear and convincing, or otherwise, of fraud, dishonesty, gross mismanagement, deceit.

The uncontroverted testimony is that Mr. LaPierre is forward facing and that he is a prolific fundraiser, the likes of which are difficult to replace. The testimony has been with the exception of the Journey group, they've tested, they trust, they would replace, but their leader is Wayne LaPierre, and they will ensure that he does, as he has, the right thing for the National Rifle Association.

Your Honor, we are moving towards plan confirmation. We are moving towards a plan that does all of the things that we told you it would do. It does all of those things without causing any violent separation from what the Code has told us, which is the New York Attorney General case can proceed. We are proceeding in that case. It is in fact moving forward. They cannot stand up here and say, well, the judgment, of the bankruptcy may come before the New York AG's case is done because Congress has told us how to resolve those issues and we

can take care of them by way of a plan.

Your Honor, please do not prejudge our plan. Please do not allow these movants to identify that the 1129 standards which are not before this Court, should somehow be construed as a basis to close the door under 301 of a case that is properly before this Court.

Your Honor, I challenge the movants to respond to how 726, 1129(d), 109, I challenge them to identify how this isn't Congress's clear, well-spoken, well-articulated, instructions as to how to proceed to this case. State preemption of the bankruptcy code by filing a complaint with the words dissolutions is clearly not the legal concept that can withstand judgment.

Your Honor, this Association did something very, very hard. It did something, in my opinion, that is very brave by filing for bankruptcy. It fulfills their goals and their goals are supported by public policy. It is a public policy of the Constitution, it is a public policy of the moving to a location that is not hostile to the right to exist. It is not a litigation strategy. How could it be a litigation strategy if we get no benefit? The case continues on.

The case can be incorporated into our plan. The outcome is not predetermined. The State of New York has all the remedies they need should they choose to participate in this proceeding instead of seeking dissolution. They could

file a plan to liquidate us. They could file a plan to distribute our assets in accordance with the New York statutes. A will, and can I assume, tackle us under 1129(a)(1), (a)(2), (a)(3), (a)(5), (a)(13), (a)(16).

Your Honor, we've done what we're supposed to do as a debtor, which is solve our problems, build bridges to our constituencies. There are two we cannot build bridges to. There is a fight till the death between a creditor and the National Rifle Association over a relationship that's spans 40 years. And there isn't irrevocable, irreconcilable, dispute, between Attorney General James, governor Cuomo and the National Rifle Association that cannot be overcome.

For all of that, and all of what we've done and the plan that we have filed, all in accordance with Title 11 of the United States Code, believe that there was no bases for the appointment of a trustee. I am confident there is no basis to dismiss us, incorporate the arguments of Mr. Strubeck, as they relate to the appointment of an examiner. I'm disappointed, but I hear for the first time in closing arguments that the United States trustee has now taken a position for which I'm expected to respond in real time. But that is what it is.

Your Honor, we have natural remedies. This Department of Justice, we may not see eye-to-eye with the National Rifle Association, but so be it, we have done the right thing. We have progressed as a debtor is supposed to

progress. I believe in my soul that we've put forward a plan that legally, according to public policy, according to the Bankruptcy Code, will allow us to fulfill our goals of paying our creditors and moving to Texas, dealing with the New York Attorney General the way that Congress told us to do.

We are a real debtor. We've done what real debtors are expected to do and I ask you to deny the totality of the motions with the exception of the motion to appoint Mr. Robichaux as our chief restructuring officer.

THE COURT: Thank you, Mr. Garman.

Let me ask Mr. Ponske or Mr. Mason, I think the order was we were going to take a break. Do you all need 30 minutes?

(No audible response)

THE COURT: Either of you?

MR. PRONSKE: Yes, Your Honor. We would like to have 30 minutes if that's okay with the Court.

THE COURT: Okay. We'll be in recess until 4:30. And My understanding is the attorney general and Ackerman will have 20 minutes each and then Judge Journey will have up to 10 minutes.

We'll be in recess until 4:30.

(Recess taken from 4:02 until 4:30 p.m.)

THE COURT: Mr. Pronske, are you ready?

MR. PRONSKE: Yes, Your Honor. Thank you.

THE COURT: Let's make sure. I see the debtor's room

open. Everybody ready in NRA?

MR. GARMAN: Yes, sir.

MR HERRING: Your Honor, this is Walt Herring, Your Honor. I have one minute of rebuttal, if I could work in one minute of rebuttal at some point.

THE COURT: Yes. I --

MR. HERRING: Thank you.

THE COURT: -- Mr. Herring, I'm going to turn you down on that one, because I worked you in and I let you go a little bit longer than you did on the first pass. So we have the three going this time. All right?

Mr. Pronske.

MR. HERRING: And I respect your patience, Your Honor.

THE COURT: Thank you.

MR. PRONSKE: Thank you, Your Honor. May it please the Court. I want to briefly address the plan that was filed last night, I believe at 7:00 o'clock, and I've enjoyed very much working with Mr. Garman during this whole process. But I -- and I didn't want to stand up during his argument, obviously, and object, but I don't think it's proper to address that plan for a couple reasons.

One, it was only filed last night at 7:00 o'clock. It's not in evidence. There was no request that it be put into evidence. The evidence in this case closed on Thursday, and I

don't believe it was proper to discuss that plan, and I'm going to make the assumption that the Court's going to disregard argument about a plan that's not in evidence and wasn't even asked to be admitted into evidence.

THE COURT: And let me just say this much. I know one of my law clerks sent notice that it had been filed, but I haven't read it. I haven't had --

MR. PRONSKE: Okay. Thank you.

THE COURT: I have not even had a chance to read it and see.

MR. PRONSKE: Thank you, Your Honor. You're in the same boat with us on that. Your Honor, I'd like to address some points that were raised during the arguments. First of all, with respect to the New York action I wanted to -- and I've said to the Court, but I want to make sure the Court is clear or that I'm clear with the Court on these issues, which is, first, that the New York Attorney General has no pecuniary interest in that lawsuit against the NRA.

It's not suing the NRA for money and it does not have -- if there is any dissolution in excess monies, the New York Attorney General does not make the decision of who that money goes to. The New York Attorney General does not make the decision about dissolution, and those decisions are made by the Court.

And I think that's clear, but I wanted to let the --

make sure that I'm clear with the Court on that. The Court determines the dissolution process and it is in the public interest. Mr. Garman mentioned the issues about a jury trial, and I did want to let the Court know also that it's the NRA that chose the jury trial, not the New York Attorney General.

Your Honor, I'd like to address issues by the unsecured creditors' committee, who we've been calling the UCC, and the debtor's counsel regarding the financial strength issues and the solvency issues in this case, which I think are at the heart of the bad faith issues in this case.

The financial stability and strength issue in this case, as I said, is fundamental and I think it's more nuanced than UCC counsel and debtor's counsel are dealing with. Solvency as a stand alone issue in and of itself might not compel the dismissal of the case, and we've never said that.

The UCC counsel says insolvency is not -- or insolvency is not necessary under the Bankruptcy Code and we completely agree with that, but it is part of the good faith/bad faith analysis, which is a gating issue for this case.

And all of us are clear, and there's absolutely no dispute that you have to be in good faith to file bankruptcy. That good faith requirement is not required in the Bankruptcy Code, but as I said earlier, every circuit in the United States has law at the circuit level that says you have to be in good

faith to file bankruptcy, and issues such as solvency and financial strength, as nuanced as they are, are part of that analysis.

Counsel for the United States Trustee I think actually stated the law more -- in a more correct, nuanced manner. Madame U.S. Trustee, Assistant U.S. Trustee argued that solvency when coupled with a litigation strategy purpose requires dismissal of the case.

I agree with that statement. The United States Trustee's position makes complete sense and goes to the limited federal jurisdiction of this Court to solve financial problems, and the bad faith of a case that does not. In this case, Your Honor, not only is there no insolvency -- in fact, there's vast solvency -- but more importantly, there's a strong financial condition, and that was testified to by Mr. Spray, Mr. Frazer and Mr. LaPierre and in their various writings to the public.

That is to say, there's no problem or issue with the NRA's ability to pay its debts, and that's the important issue. An issue of solvency, Your Honor, is not as important. Solvency can turn on a dime. You can be solvent one day and know you've got a judgment coming against you next week where you're going to be insolvent.

And so the Bankruptcy Code is not so inflexible as to require insolvency, but I would submit, Your Honor, as a part of a good faith filing you have to have some problems with your

financial condition, and you have to have debt issues, either now or in the foreseeable future.

In this case the evidence is clear from the three individuals I mentioned to you that the NRA is in the strongest financial conditions of its history. Debtor's counsel raised something today that's actually the first time I've heard a hint of this in the bankruptcy case, and I really do want to address it and we've got actual evidence to address this issue, and that is, debtor's counsel says that there is litigation going on that could create a debt problem so as to qualify as having some financial problems in this case.

That statement is absolutely against the evidence, and it is mister -- the debtor's counsel saying that it obviously is not evidence. There was no evidence in this trial of any potential liabilities that are going to come from that litigation, such as value type evidence or opinion evidence as to what these lawsuits look like at the end of the day.

Debtor's counsel even admitted at one point in his closing that the lawsuit regarding Ackerman, which is their largest lawsuit, he thinks that both sides think that they're owed money by each other, and that's probably a pretty fair statement.

However, despite what the debtor said about this litigation potentially creating liabilities, let's look at what the actual evidence is. In these lawsuits there are

counterclaims where the NRA claims that not only are these lawsuits not liabilities, but actually, they're assets.

The testimonial evidence is that the debtor has no problem -- and this was evidence in the Court -- the debtor has no problem managing, handling and paying for that litigation. Saying that there is some solvency danger in that litigation is literally being raised for the first time today in closing argument.

Debtor's counsel referenced two specific examples of that conclusion, and I'm glad he did, because it allows us to talk about the real evidence, at least on those two cases. There's too many of them to go through all of them, but at least debtor's counsel referenced two potential problems with that so that we can address the realities of that from the evidence.

The first one is the Ackerman McQueen case, and debtor's counsel in closing said that there's $100 million claimed, and I've got a couple of responses to that. One is, that $100 million is not in evidence. It was not testified to and the complaints with the Ackerman Group -- or there's actually two lawsuits, and those complaints are not in evidence.

NYAG Exhibit 191, which is in evidence, the schedules and statements of affairs of the debtors, is contrary to debtor's counsels' assertions. The schedules and statements of

affairs show to the contrary, and that evidence shows, Your Honor, there's two different pages that address this issue.

One is showing the claim of Ackerman McQueen against the debtor, and that amount when it says what is the amount says, unknown, and it says that that liability is contingent and it's unliquidated and it's disputed. Now, let's look at what the -- how the NRA values their counterclaims against Ackerman McQueen, and that's in that same Exhibit 191.

And it shows two lawsuits pending with Ackerman McQueen, one in the Bank of America Circuit Court and one in the Northern District of Texas Federal Court. Under amounts requested by the NRA in the schedules that were filed with the Court it shows that in the Virginia case the NRA claims $40 million against Ackerman, and in the -- that's the Virginia case -- and in the Dallas, Texas, case, Federal District Court, the NRA alleges $100 million against Ackerman.

So the only evidence before this Court is that the claim of Ackerman against the debtor is unknown, and the claim of the debtor against Ackerman McQueen in litigation is $140 million. He also referenced the potential claim by the secured creditor against the building that's the corporate headquarters in Virginia.

And again, Your Honor, the evidence is contrary to the fact -- or to the statement made, which is that that may end up being a liability against the estate. And the reason

I'm sensitive to this is that, Your Honor, I think the evidence is absolutely, 100 percent clear and undisputed that the assets of the NRA vastly exceed the liabilities and I want to make sure we don't have any leaks in the evidence here.

Here is what the schedules and the MORs -- M-O-R-s, monthly operating reports, show with respect to the secured creditor. The schedules and statements of affairs show that the secured creditor is owed $44 million in debt. The MORs show the asset value, and I understand that's a book value, but it shows that book value at 79 million.

And then the testimony clarified that from Ms. Sonya Rowling saying that the real value of that building isn't 79 million. She said it's $60 million plus. So the bookends there are, Your Honor, at a $60 million valuation, that's 16 million in equity and at 79 million, that's 35 million positive.

So that's the real evidence on these issues before the Court. Other than that, there's no evidence before the Court that there's any problems with the litigation, and all we have is the showing that the unsecured creditors will be paid in full, because there's plenty of cash on hand at the present time to pay those claims.

Again, Your Honor, the NRA does not have a debt problem or insolvency problem or a financial condition problem. It has a regulatory problem, a regulatory problem that could

result, if determined by the Court, not the NYAG, to be in the best interest of the public in a dissolution.

That's not a debt problem. It's not a problem that's solvable by this Court, and yet, it is truly the only one potential problem that this case seeks to attempt to solve. If I'm wrong about that, then think about it, Your Honor, what single other issue have you heard about in 12 days of this case being tried that this case is trying to solve?

They're not trying to solve unsecured creditor problems that they could write a check for tomorrow. They're not solving problems with their secured creditor, which they could sell the building and put $16 million minimum in their pocket.

The only problem they told you that they're trying to solve is the New York, which is not a debt problem, but it's a regulatory problem. And that problem being a regulatory problem is a problem that this Court has no interest in, because this Court can't solve regulatory problems, and shouldn't solve problems that have no impact whatsoever on creditors.

The committee counsel never even suggested that the unsecured creditors have any realistic possibilities of not getting paid in full. That is a game changer, because there is no constituency in this case that bankruptcy law has a legitimate purpose to impact.

The unsecured creditors should not be able to be the tail wagging the dog in this case, when there are no issues that would lead to creditors not being paid. There's only one thing that can hurt or that could hurt the unsecured creditors in this case, and that's already happened, and that is the filing of this bankruptcy case, which prevented those unsecured creditors from being paid in the ordinary course of business.

Having unsecured creditors that -- and I really feel strongly about this next statement, and I think it to me impacts the big picture of where this case should go -- having unsecured creditors that have no possibility of not getting paid is functionally the same as having no creditors at all.

This case is not about paying unsecured creditors, and no argument to the contrary that's been raised with evidence is credible. In short, this case is a square peg in a round hole that no amount of strategy and attorneys' fees can solve, and it's not a problem that this Court should solve.

The problem is regulatory and can only be solved by the regulatory court, which is in New York. For an example here -- for an example here, Your Honor, I'm going to cite to an other case that's instructive on this issue, and that's the Forest Hill Funeral Home and Memorial Park case, and that's at 364 B.R. 808.

It's a bankruptcy decision from the Eastern District of Oklahoma in 2007. In this case there was a funeral home

that sold prepaid plots. The money that was paid for the prepaid plots was put into trust, and by an unscrupulous manager of the debtor, was pulled out and invested into an oil and gas deal.

The regulators in that case, which was the Tennessee Department of Commerce and Insurance, found out about this investment -- trying to think of a better word for that -- and tried to shut the company down and appoint a receiver. Bankruptcy was filed to stop that receivership.

In this case there were three big differences between that case and this case that make that case much more bankruptcy worthy, much more in good faith than the NRA case. Those three facts are as follows. One, not only was Forest Hill Funeral Home insolvent, but it was in dire financial straits.

Two, in that case a receivership was not only filed, but was imminently set for a hearing, and that's what triggered the bankruptcy case, and three, a CRO had already been appointed and management had stepped aside, which solved their governance problems.

Your Honor, those three issues make that Forest Hill case a much stronger case in favor of bankruptcy than this case. Their severe insolvency meant that shutting that company down had real consequences to creditors, unlike a dissolution would in this case.

The receivership in that case was imminent compared to this case, where it hasn't been filed or even hinted at, and I don't agree that the statements from Attorney General James that you heard say that there's any receivership imminent. I took what she said to talk about seizures, and the only seizures that would be appropriate, because the only seizures that are being sued in that case, or the only monetary amounts that are being sued for in that case is against the individual defendants, not against the debtor.

But again, the receivership in that case was imminent. The CRO had already replaced management. Compare that with our allegation that we still have management problems in the NRA. Despite that Forest Hill case being I think what is much more of a real bankruptcy case because it had regulation issues, the Court still dismissed that case for a bad filing with the following quote.

The Court said, "In this case the TDCI" -- that's the Texas Department of Commerce and Insurance -- "and the Tennessee Attorney General have strong, perhaps compelling, even compelling interests in seeing that the chancery action" -- that's the regulatory proceeding -- "run its course, and that the conduct of the debtor and its pre-petition management is properly brought into the light of day. The TDCI and the Tennessee courts are in the best position to do so."

Case was dismissed as a bad faith filing to let the

regulatory action go forward, even where significant creditor issues existed, and we don't have that fact in this case. Let me go next quickly to the question that you asked, and in answering that question the committee attorney and the debtor's attorney did not address, in my opinion, the meat of the most important part of that question, which is, how are Bankruptcy Court cases different when there is a case pending that deals with the interest of the public.

And again, Your Honor, I think the language is clear under section 1109(b)(1) of New York or NPCL, which specifically says that when determining a dissolution case, that is, specifically that is brought by the attorney general, "The interests of the public are paramount."

That's an important issue brushed over, both by the debtor and the UDC counsel. It's a vitally important issue. When there are no creditors that are going to be paid all there is, is a public interest. That's all there is in this case. Members are not equity owners.

Donors are not equity owners. There is literally nothing to hear in this case, other than they want to move to Texas. And I promise you, Judge, that's not a valid reason to file a bankruptcy case. So in closing, Your Honor, I would submit to you that this case, more specifically, the dismissal motion, is at its core a case about the integrity of the bankruptcy process.

Not dismissing this case is the same as condoning it. What you would be condoning, of course, becomes, as we've said, set out of a legal precedent. What legal principles would the NRA bankruptcy case be cited for in the future if this case is not dismissed.

I submit to you, Your Honor, it would stand for the proposition that you absolutely do not have to have financial problems to file a Chapter 11. In fact, you can be in the best condition of your company's history. This case would stand for the proposition that you can file Chapter 11 when your sole purpose of filing is litigation strategy.

This case would stand for the proposition that you can file Chapter 11 to escape the police and regulatory power of state government in a legitimate State Court regulatory proceeding. This case would stand for the proposition that venue rules for the filing of Chapter 11 under 28 U.S.C. section 1408 have -- literally have zero meaning.

You can now file bankruptcy with impunity in any district in the entire United States. You now no longer are limited by section 1408 to file bankruptcy where your principal assets, principal place of business or domicile are situated.

You now have absolute carte blanc to have the real debtor create a shell company with no creditors, employees or operations, open a bank account for your shell company in the district where your forum shopping has taken you, have your

lawyer fund the bank account with $50,000, have your shell company file bankruptcy and then file the real case as an affiliate.

I've been involved in many trustee motions and many dismissal motions in 30 years of practice, and frankly, and as this Court knows, many times on the wrong side of the argument, honestly, and Your Honor, in the 38 years of practicing bankruptcy law I can almost honestly say, this is the worst abuse I have ever seen.

And unfortunately, this abuse, if not stopped by a dismissal, especially with the high profile of this case, will become a court sanctioned and court precedent instruction booklet on how to file a Chapter 11 in the worst possible bad faith with complete impunity and complete success.

If this case is not dismissed, Your Honor, you would be telegraphing that, if you don't like what's going on in your State Court lawsuit, come on down to Dallas. This abuse would be limited not only to New York regulatory proceedings.

If you are massive solvent and your legal case in State Court in, for example, Sherman, Texas, is not going well, it's so simple. File your new shell company in Dallas. Call yourself an affiliate. File bankruptcy and then send out a press release that afternoon that says, dump Grayson County.

That would be the lasting legacy of this case if it's not dismissed. Thank you, Your Honor.

THE COURT: Thank you, Mr. Pronske.

Mr. Mason.

MR. MASON: Thank you, Your Honor. Can you hear me okay?

THE COURT: I can. Thank you.

MR. MASON: Your Honor, I want to also extend my appreciation to the Court. It's been a long and crazy last couple of months and we appreciate the Court's patience, and know that the Court has moved a lot of things around to make this case a priority, as well as other judges in the Northern District. So we very much appreciate that.

I'd like to address a few things that Mr. Garman said. But first, I want -- I do want to address a couple things that Mr. Strubeck raised. Mr. Pronske touched on this, but the notion that dismissing this case is not in the best interest of the creditors, as Mr. Pronske just stated, creditors are better off here, because secured creditors and trade debt creditors would be paid quicker if this case is dismissed.

It would also be better for contingent creditors, because they could liquidate their claims faster. With respect to this whole CRO and Mr. Robichaux, Mr. Garman said that the CRO has been retained for confidence in transparency. We now have the responsible parties in place.

I would just remind the Court -- and I know Mr.

Garman wasn't around when this happened -- that the NRA -- Mr. Robichaux was the NRA's second choice. And what they originally wanted to do was they wanted to hire Marshall Smith, Mr. Brewer's former client when he was working at 3M as the general counsel.

Does that really scream confidence and transparency? The reality is the only reason that the CRO is even an issue here is because the NRA agreed to hire Mr. Robichaux to keep the UCC happy. Mr. Strubeck acknowledged that the CRO was being driven by the UCC, and had there not been these motions to dismiss I would contend that the NRA wouldn't have a CRO right now.

If this bankruptcy is dismissed, as well, the NRA could continue to retain Mr. Robichaux. They could continue to do -- they could continue to restructure. They could continue to make these corporate governance changes. I know that Mr. Garman stated that as part of their plan they have specific, tangible proposals to change their governance.

They can do all those things with their board, and if the NRA does ultimately stand trial in New York they can put on evidence of that. But there are things that the NRA is able to accomplish outside of the bankruptcy process. One of the things that Mr. Garman talked about with respect to Mr. LaPierre was that at the end of the day the evidence has simply shown that Mr. LaPierre, if he did anything wrong, was maybe

accept some excess benefits, and he has paid back that money and that issue is over.

But recall, Your Honor, that the evidence in this case about Mr. LaPierre going around and telling numerous people, including Mr. Powell, Mr. Hart, Mr. Makris and others that Mr. Brewer was the only person that was going to be able to keep Wayne LaPierre out of jail.

Mr. Garman brought up Ackerman McQueen again, and I intentionally did not do that in my original closing argument and I don't want to get into it here, but I just want to make a couple quick points. One is, this whole notion that the Oliver North contract was somehow concealed from the NRA is just absolutely not true.

The evidence is that Mr. LaPierre negotiated the Oliver North contract. The audit committee of the NRA approved the North contract. With respect to the Winkler letters, the audits, Your Honor heard the testimony of Mr. Winkler. We've talked about that. It's in the record. I'm not going to beat a dead horse on that.

With respect to the plan I agree with Mr. Pronske, the plan is not before the Court. But essentially what Mr. Garman is asking is that, let's just hit the pause button. Let's just get past -- let us get past this dismissal part.

We'll show you the plan, Judge. We'll right about it later. We're going to figure it all out, that, you know,

whether or not the dissolution, there's a proper purpose for reorganization, let's put that on the back burner. Let's put it in the future.

The problem with that is that the evidence in this trial made absolutely clear that the NRA filed this bankruptcy to take dissolution off the table. Mr. Garman asked, what is the litigation tactic. The litigation tactic is taking dissolution off the table.

The effect of that is they're asking -- they're mooting that relief in the New York Attorney General enforcement action. Sure it can continue. Sure there's individual defendants up there, but that is the litigation tactic.

The NRA throughout this case -- and we're starting to hear different things in closing and I'll address those a little bit, new things in terms of why they filed for bankruptcy. But the reality is, when they filed they made clear why they filed.

We took depositions. We've had trial testimony. This bankruptcy was not filed for a proper purpose. And if the foundation is rotten you can't build a house on it, and that's what they're asking you to do here, Your Honor. With respect to the special litigation committee, Mr. Garman says that the special litigation committee was formed because John Frazer, Wayne LaPierre were named individually in the New York Attorney

General action.

And as Mr. Frazer testified, he was conflicted out. Mr. Garman said that Mr. Frazer did the ethical thing by recusing himself from the bankruptcy because of his conflict with the New York Attorney General filing. But Mr. Garman's argument means that Mr. LaPierre didn't uphold those same ethical standards when he's been all over this bankruptcy, making decisions about the filing of the bankruptcy, who to hire, what lawyers to hire, when to transfer money to these various firms and what to tell or what to not tell the board.

Mr. Pronske again touched on section 1109 of the New York nonprofit statute. I'm not going to read the statute again. What I will say, though, is Mr. Strubeck brought up the question of an interpretation of that statute, you know, like what is the public interest mean.

Does that mean the public of New York? Does that mean the public of -- in the United States? And I would submit, Your Honor, that the best person to answer that question and make that determination is Judge Joel Cohen up in New York State Court.

There are a bunch of things that I was shocked that we heard or we did not hear about in Mr. Garman's closing. One of the things that he said is that there was no evidence of dissenters being pushed out. And with that I would remind the Court about Esther Schneider, who was stripped of -- testified

that she was stripped of committee assignments after challenging Mr. LaPierre.

Mr. Frazer testified that three board members were removed from committees when questioning Mr. LaPierre's expenses and spending. Colonel North was pushed out and not re-nominated after questioning Mr. Brewer's retention and his fees.

Mr. Hart was fired after forwarding the Winkler letters to the board. He was fired by Mr. LaPierre without consultation with the board. Mr. Cox was suspended. We also didn't hear anything from Mr. Garman about Sea Girt, except to justify the $50,000.

There was no answer for the undisputed fact, and the testimony that we heard, was that Sea Girt was a sham entity that was formed solely to manufacture venue. They're apparently not running from that fact here. We did not hear any of that.

We also didn't hear any dispute at the trial and the New York attorney enforcement action is years away. We did not hear any argument about how this bankruptcy filing was initially authorized by the board on January 15th. Instead, we heard more about asking for forgiveness and the ratification.

Mr. Garman and Mr. Strubeck said they were shocked by the U.S. Trustee's position. The evidence that they heard must have been different from what I've heard the last month,

because I -- it's not shocking at all to us, Your Honor. And right before Mr. Garman finished up he said, Your Honor, we have natural enemies, when talking about the surprise of the U.S. Trustees.

This Department of Justice, we may not see eye to eye with the National Rifle Association, so -- but so be it. So are we going ahead again now, is the Department of Justice now weaponized against the NRA, because they disagree with the position as to where this bankruptcy should be going?

I'd like to conclude by going back to the opening, Mr. Garman's opening, and the things that he promised you, the reasons why this bankruptcy was filed. He analogized it to a foreclosure. A judgment is heading our way, he promised this Court. A receiver is in the works.

He tried to paint a picture that these are imminent circumstances. We have to get into the -- we have to seek the protection of the Bankruptcy Courts right now. Your Honor, there's no evidence of that. It's a manufactured justification after the fact for why the NRA is here.

And now, for the first time in closing we hear that the NRA claims that the existential threat is we couldn't get insurance, there was Governor Cuomo, we couldn't get insurance. So that's why we needed to file for bankruptcy.

When we took these depositions, when we listened to the trial testimony of Mr. Frazer and the various people and we

talked about, why are we filing, why are we here, why is the NRA filing for bankruptcy, there was no mention about not getting insurance.

Mr. Garman didn't mention anything about it in his opening. This whole argument about Governor Cuomo, the New York Department of Financial Services, there was a lawsuit filed by the NRA relating to that issue in May of 2018 on those issues. The dissolution argument didn't work out.

The receiver argument didn't pan out. There's no evidence of a receiver. We heard plenty of evidence that litigation, consolidating and streamlining litigation had nothing to do with why we are here now. So now, we're going to claim that we had to file this bankruptcy because we were having trouble getting insurance nearly three years ago.

They keep changing their story, Your Honor, and enough is enough. We know that this Court has heard a lot of evidence over the last month. We trust the Court's judgment. We appreciate the Court's patience. We believe that this trial has established the need to stop a solvent company from -- this trial is about solvent -- stopping a solvent company from running from accountability and creating a very dangerous precedent.

And we believe that this bankruptcy should be dismissed with prejudice. And again, Your Honor, we thank you and appreciate your time.

THE COURT: Thank you, Mr. Mason.

Mr. Taylor, you get to go last.

MR. TAYLOR: Thank you, Your Honor. May it please the Court. Judge Journey, et al., close this trial with gratitude for the opportunity to be heard in this forum, and with hope that this Court will adopt the proposed plan for an examiner in this case.

Earlier today we discussed that our clients are the only ones without a pecuniary or professional interest in this case. A review of the record and the arguments of counsel today bears that out. Now, I believe that I've just heard that the New York AG believes that she has no pecuniary interest, because she is not suing for any money on the New York State's own accord.

However, in the clips that we also just heard, the New York Attorney General readily admitted that she was pursuing the claims of those that donated to the NRA. She also used the words "dissolution" and "seizure of assets." The proper test as to whether the pecuniary interest is being pursued in the First Circuit, as stated in the Halo case is, as after assessing the totality of the circumstances the Bankruptcy Court will determine whether the regulatory proceeding at issue is designed primarily to protect the public safety and welfare, or represents a governmental attempt to recover from the property of the debtor's estate -- we have

that here, whether on its own claim, allegedly not here -- or on the nongovernmental debts of private parties.

That's precisely what Ms. James said that she was doing in her press conference. The agenda of the New York Attorney General was laid bare almost three years ago when she stated in her political campaign that the NRA had a poisonous agenda, was a criminal enterprise, acted as an organ of deadly propaganda and was a terrorist organization.

She then followed through with her threat made in that campaign and filed the enforcement action. Today, counsel for the NRA in its closing arguments has demonstrated the inconsistent statements and position taken by the AG in order to further her ends.

Ackerman McQueen is in a fight with the NRA that has been described as a fight to the death over a 40-year relationship gone bad. The NRA seeks to do business as normal and not have their affairs exposed. The NRA wishes to accomplish this feat with the CRO, whose investigatory role is neither fully authorized or defined, and whose opinions and impressions could possibly be kept secret unless he finds that there's a post-petition breach of fiduciary duty, not simply a mere suspicion or a desire to investigate further.

Judge Journey, Rocky Marshall, Buz Mills and Bart Skelton are here as board members and as lifetime members of the NRA petitioning this Court to administer this bankruptcy in

a just manner, not to advance the personal lifestyle of any person or the political ends of any person; to advance and protect the best interests of the members, the creditors and the legitimate stake holders here.

Despite the various disagreements of the parties throughout the course of this trial we see today most clearly the paths are converging to a resolution. And concerning the relief, or at a minimum, the alternative relief sought by the parties, the paths of the UCC, the trustee, the NRA and Judge Journey are all converging on a single solution, that someone must be responsible for the oversight, reorganization of the NRA in this Court.

A proposal for an examiner meets this joint goal fully and legally. A trustee with limited powers has not been petitioned for. A CRO would report directly to the NRA and would potentially present difficulties and complications with the disclosure of all findings.

But the examiner motion is filed. It is valid. It resolves the above-stated problems. Today we've heard allegations of overspending by lawyers and other vendors. Judge Journey's proposal will cure that problem and opens up the possibility for recovery of funds for those prior problems.

We've heard allegations of mismanagement by Wayne LaPierre and others. Judge Journey's proposal allows for an examiner to inspect the record and effect managerial changes if

necessary. We've heard concerns from creditors about recovery of monies owed.

An examiner would be able to work with the unsecured creditors' committee so as not to duplicate those efforts, and instead can work collaboratively with them and the professionals to accomplish those goals in both a cost efficient means and to maximize the recovery.

We've heard allegations that there is a cloak of secrecy and possibly even a cloud of fraudulent activity hanging over the organization. Judge Journey's proposal will allow the examiner to potentially disband the SLC, open up the books and provide accountabilities to members and the general public.

We've heard allegations about various persons or vendors improperly taking money from the NRA. Judge Journey proposal calls for an examiner to investigate and recommend pursuit of such claims. There is, after all, a four-year look back for such actions.

The NRA is a nonprofit corporation. It has obligations beyond merely financial ones. It has dedicated itself to a cause and purpose beyond simply maximizing return. So when you think about bankruptcy policy and what should be accomplished here, it is not simply preserving the going concern monetary value or providing for a full payoff for creditors.

That's where a lot of the case law is based upon and it doesn't entirely capture what's happening in this bankruptcy. Here, we are preserving the going concern mission value or charitable purpose value. Our clients have a fiduciary obligation to protect that as board members, and the potential proceedings in New York appear aimed at totally eliminating that value in the 150-year history of the NRA.

Moving to Texas is most certainly a proper of reorganizing in the Bankruptcy Code. It is a very fundamental use of the Bankruptcy Code. Denial of access to financial institutions' insurance, an attorney general seeking dissolution, seizure of assets and potentially receivership, of course the NRA wants to reorganize under a different domicile. It's appropriate that they do so.

In closing, we will end where we began. This is the most important case in the country right now, because it directly affects 5 million NRA members and 2.5 million lifetime members. Will the voices of those millions be silenced or will their voices continue to ring out in support of gun safety and gun rights?

We respectfully pray that the Court grant the relief sought by us today and set out in our proposed order being filed tomorrow. Thank you, Your Honor.

THE COURT: Thank you, Mr. Taylor. Let me just make a couple remarks at the end and then I'll let you all go. I

asked when the case was filed and then when some of these motions came in if you all would keep the rhetoric as low as possible, and I understand there's strong feelings all the way around about the NRA.

And you all have done a very nice job of that. I had to decide a few skirmishes, but for the most part I think you all worked well together and I appreciate that. I found the matters that are being concluded today to be awfully hard. This isn't the longest trial I've ever hard and it's not the biggest one I've ever had with dollars, but it certainly has been a hard one on everybody, I think, and I appreciate everybody's efforts.

I said the other day that this one is right at the top of my list on importance on things that I will decide over my judicial career. I'm at the end of my judicial career next year, so when you hear that I'm retiring don't think I'm retiring just because I've been handling the NRA case.

I announced that actually before I drew the case. But I want you to know that we're putting this at the top of importance. My anticipation is that we'll get you a written ruling in approximately a week. Our goal is to try to get you something in your hands.

It may not be Monday, but we're certainly shooting to get it to you at the beginning of next week. Thank you very much. We'll be in recess.

(Whereupon, at 5:15 p.m., the trial in the above-entitled matter adjourned.)

C E R T I F I C A T I O N

We, KAREN HARTMANN, TRACY GRIBBEN-CALI, KAREN WATSON and BETH REID-GRIGSBY, court approved transcribers, certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter, and to the best of our ability.

/s/ Karen Hartmann
KAREN HARTMANN

/s/ Tracy Gribben-Cali
TRACY GRIBBEN-CALI

/s/ Karen K. Watson
KAREN K. WATSON

/s/ Beth Reid-Grigsby
BETH REID-GRIGSBY

J&J COURT TRANSCRIBERS, INC. DATE: May 4, 2021